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In the Supreme Court of the United States

OCTOBER TERM, 1975

PASADENA CITY BOARD OF EDUCATION, ET AL.,
PETITIONERS

v.

NANCY ANNE SPANGLER, ET AL., AND
UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. A1–A33) are reported at 519 F. 2d 430. The opinion and order of the district court (App. 452–465) is reported at 375 F. Supp. 1304. Other opinions in this litigation appear at 427 F. 2d 1352, 415 F. 2d 1242, 384 F. Supp. 846, and 311 F. Supp. 501 (App. 3–4, 97–133).

JURISDICTION

The judgment of the court of appeals was entered on May 5, 1975. The petition for a writ of certiorari was filed on July 30, 1975, and was granted on November 11, 1975. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a school system automatically becomes a "unitary school system" immediately upon compliance with a desegregation plan developed by order of the district court.

2. Whether the district court's injunctive supervision of the pertinent activities of a school system that has engaged in racial discrimination should be lifted before the school system has established that it has been purged of the effects of that discrimination.

3. Whether a desegregation case in which the United States has intervened as a plaintiff becomes moot when the individual plaintiffs leave the school system.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

The relevant statutory provisions are set out at Pet. Br. A1–A18.

STATEMENT

A. PROCEDURAL HISTORY

1. THE DESEGREGATION PROCEEDINGS

On August 28, 1968, several students in the public schools of Pasadena, California, and their parents filed a class action complaint seeking injunctive relief from alleged unconstitutional racial segregation in the district's high schools. On November 19, 1968, the United States moved to intervene in the case pursuant to Title IX, Section 902, of the Civil Rights Act of 1964, 78 Stat. 266, 42 U.S.C. 2000h–2.[1] The court granted the motion on December 6, 1968.[2]

The trial commenced on January 6, 1970, and the court heard testimony for nine days. On January 23, 1970, the district court entered a judgment holding that the school system was segregated as a result of the intentional acts and omissions of the defendants. It enjoined racial discrimination throughout the school district and directed the defendants to develop a de-

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[1] The compaint in intervention "brought into the case the entire Pasadena Public School system." 415 F. 2d at 1243. It asked the district court to enjoin further discriminatory practices at all schools and to order the school board to develop and implement a plan that would eliminate the effects of past discrimination. *Ibid.*

[2] On February 14, 1969, the district court granted the school board's motion to strike the allegations concerning elementary, junior high, and special schools. On August 28, 1969, the court of appeals reversed and remanded with instructions to reinstate the allegations. 415 F. 2d at 1248. It held that "the district court erroneously concluded that the United States was limited in the relief it could obtain, to the relief ~~sought~~ Sought by the plaintiffs" (*id.* at 1247).

segregation plan under which no school would enroll "a majority of any minority students," and under which teachers and professional staff members would be hired, assigned, and promoted on a non-discriminatory basis (App. 3–4). An extensive opinion (App. 97–133) explaining the court's decision was released later.

The school board voted not to appeal the judgment (App. 271–272) and, on February 18, 1970, filed its proposed plan, the "Pasadena Plan" (App. 5–57).[3] On March 2, 1970, parents of other children attending the Pasadena public schools sought to intervene for the purpose of appealing (App. 453). The district court denied the motion on March 4, 1970, and the court of appeals affirmed. 427 F. 2d 1352, certiorari denied, 402 U.S. 943.

On March 10, 1970, the district court approved the Pasadena Plan (App. 96).[4]

2. THE PRESENT PROCEEDINGS

On January 15, 1974, the school board filed a motion to dissolve the district court's injunction or to implement an alternative plan (App. 232–233). On May 3, 1974, after a comprehensive hearing on the

[3] Two weeks later the school board submitted an amendment designed to reduce costs and to achieve more contiguous attendance areas and better proximity to school facilities (see App. 58–95).

[4] Certain amendments were proposed by the school board. After the parties had agreed upon them, the district court approved them in August 1970 (App. 134–136).

motion, the court denied the motion (App. 452–459).[5] The district court denied petitioners' motion for a stay pending appeal.[6] On May 5, 1975, the court of appeals affirmed the judgment of the district court (Pet. App. A1–A33).

B. FACTS

The Pasadena Unified School District includes the city of Pasadena, the town of Altadena, the city of Sierra Madre and portions of Los Angeles County (App. 98). At its broadest points, the district measures approximately 9.37 miles from east to west and 6.31 miles from north to south (see the map in App. Rear Folio). As of October 5, 1973, its thirty-three regular schools[7] and eight "special" schools enrolled 25,414 students, of whom 11,188 (44 percent) were white and 10,155 (40 percent) were black. 3,087

[5] Evidence presented at the hearing showed that petitioners had appointed five persons to administrative positions in July 1973 without following the procedures set forth in the Pasadena Plan. Compare App. 514–518 with App. 49–56. On August 12, 1974, the court adjudged petitioners in contempt for having violated the Plan in making those appointments. 384 F. Supp. 846. Petitioners' appeal from that judgment was heard by the court of appeals on November 5, 1975.

[6] We are lodging with the Clerk of this Court copies of petitioners' June 28, 1974, motion for stay; of their memorandum of points and authorities and affidavits in support thereof; and of our July 12, 1974, response and supporting memorandum.

[7] Fourteen "primary" (grades K–3) schools; eleven "elementary" (grades 4–6) schools; four junior high schools (grades 7–8); and four high schools (App. 413–417).

students of Spanish origin made up the majority of the remaining 16 percent (App. 417).

1. THE DISTRICT COURT'S 1970 FINDINGS OF FACT

The district court found that the Pasadena school system had been unconstitutionally segregated for fifteen years because of the acts and omissions of the school board (App. 97–126). It expressed the applicable legal standard as follows (App. 128):

> A violation of the Fourteenth Amendment has occurred when public school officials have made a series of educational policy decisions which were based wholly or in part on consideration of the race of students or teachers and which have contributed to increasing racial segregation[8] in the public school system.

The court observed that, in the preceding fifteen years, Pasadena had experienced a high degree of racial separation, especially in its elementary schools.[9]

[8] Although the court used the terms "racial segregation" and "racial imbalance" interchangeably in its findings and conclusions (App. 99, n. 4), the findings and conclusions expressly recognize a distinction between "*de facto* or adventitious segregation" and the situation presented this case, in which "the existing segregation of pupils and teachers is inseparable from the discriminatory practices and policies of the defendants" (App. 132).

[9] In each of those years, more than 90 percent of the district's white elementary-age children had attended majority-white schools, while more than 30 percent of its black elementary-age children had attended majority-black schools (App. 100). During the 1969–1970 school year, 85 percent of the district's black elementary-age children attended its eight majority-black elementary schools, and 93 percent of its white elementary-age children attended the remaining elementary schools (App. 99); of the 30,622 students then enrolled, 9,173 (30 percent) were black (App. 98); but thirteen of the district's elementary schools were less than five

The United States presented extensive evidence, and the district court made detailed findings, that this separation had resulted, in large measure, from a series of deliberate actions by the school board.

a. The court described a series of racial gerrymanders and manipulations of student assignments designed to avoid assignment of white students to nearby majority-black schools and designed to confine most blacks to such schools (App. 100–109). The court found, for example, that although the school board often had changed attendance zones in order to combine areas of predominantly black attendance (App. 102–103), it had never since 1954 "made an attendance area change that involved assigning students from a majority white residential area to a majority black school" (App. 100).

b. The court gave examples of the transportation of white students past under-enrolled majority-black schools to more distant (and often overcrowded) majority white schools (App. 100–104, 109, 122–123).

c. The court found that the school board had "granted transfers that they knew or should have known were wholly or at least in part motivated by racial considerations, including baseless transfers that had the effect of intensifying racial segregation in the Pasadena schools" (App. 125).[10]

percent black in enrollment, two were more than 90 percent black, three were more than 80 percent black, two were more than 60 percent black, and another was 59 percent black (App. 99).

[10] The school board also experimented with a variety of "open enrollment" and "free choice" plans of student assignment (App.

d. The court found that the school board had a "policy and practice of assigning most black teachers to black schools" (App. 116) and that it also discriminated in the hiring of black teachers and administrators (App. 112–118). Some identifiably white schools had never been assigned a black teacher or administrator (App. 112). Other schools had been assigned only one. The court found that the school system had hired only one black nurse, who was assigned to predominantly black schools (App. 114). Officials assigned black substitute teachers to majority-black schools and allowed white substitute teachers to avoid teaching at identifiably black schools (App. 113–114), and they assigned less experienced teachers with less education to majority-black schools more frequently than to majority-white schools (App. 114).

e. The court found that the school board planned the construction of new facilities, additions to existing facilities, and the placement of transportable classrooms in a manner that contributed to racial segregation (App. 103, 119–123). The school board selected both the location and the capacity of new schools in a manner calculated to ensure that each new school

105–106, 150, 151, 153–163, 173–197, 198–216, 217–220, 222–223, 225–231) that, "until 1968, permitted a small number of both black and white students to escape Negro schools" (App. 106). None of these experiments diminished the racial separation that had been created, in part, by other school board actions (App. 106, 137–149, 165–172, 193–195, 197, 198–200, 209–216, 221–227). Nor did a "free choice" summer school experiment in 1973 (App. 510–511).

would be racially imbalanced at its opening. Several of these schools were abnormally small, apparently in order to serve only a single, racially-identifiable neighborhood (App. 120). When a small school in a black neighborhood became overcrowded, the school board added several transportable classrooms; a nearby school with overwhelmingly white enrollment was not used to capacity (App. 103, 121–122). The same pattern was followed in building permanent additions to schools in black neighborhoods (App. 121).

2. THE PASADENA PLAN AND ITS IMPLEMENTATION

a. The Pasadena Plan "represents the work and thinking of the Pasadena City Board of Education, the superintendent, and the [school district] staff under his direction" (App. 9). Its student assignment provisions were designed to comply with the district court's mandate that no school have an enrollment of which any one minority group constitutes the majority (App. 9).[11]

The Plan divides the elementary schools of the district into four "ethnically balanced areas," each served by a number of "primary" (grades kindergarten ("K") to 3) and "upper grade" (grades 4–6) schools (App. 9–10). The Plan reorganized Pasadena's traditional elementary (K–6) schools into separate K–3 and 4–6 facilities in order to enable the

[11] The Plan also includes detailed procedures for the hiring and promotion of teachers and administrators (App. 47–57).

school system to "provide specialization which is important to guarantee improvement in basic skills."[12] The reorganization also facilitates retention of "neighborhood" schools by allowing students to "walk to a nearby school for part of their elementary schooling and be transported with students in their neighborhoods to another school" for the other part (App. 10). The district's junior high schools serve grades 7 and 8 (App. 27); its senior high schools serve grades 9–12 (App. 134).

The Plan allows students to transfer from their assigned schools to other schools in situations of "urgent hardship" involving "family circumstances and/or medical, safety, psychological, or curriculum considerations" (App. 35). The school district provides transportation of "all pupils attending schools outside their normal areas" (App. 45). The Plan contemplated the need for continuing evaluation, modifications and adjustments in attendance zones and student assignments in order to achieve and maintain succesful integration (App. 9, 10, 27, 37).

b. Pasadena's white enrollment had been declining for many years (App. 347–348, 379, 421, 600, 601).[13]

[12] App. 10. Superintendent Cortines, responding to questions at a public meeting of the school board on January 15, 1974, stated that the majority of his administrative staff preferred the K–3, 4–6 grade structure (App. 584).

[13] In 1964, for example, 21,695 white students were enrolled in the district's public schools; in 1966, 20,958; in 1968, 19,008; and in 1969, 17,859. In 1970, the year in which the Pasadena Plan was implemented, the number was 15,647. White enrollment continued to decline after 1970 but at a steadily decreasing rate. See App. 421.

The school board submitted evidence that this decline accelerated during the twelve-month period prior to implementation of the Pasadena Plan (App. 421, 601) and asked the court to infer that the pending implementation of the Plan was the sole cause of this.[14]

The United States presented evidence showing that the decline in white enrollment was not necessarily attributable to the school system's desegregation efforts (App. 386–387, 393, 531–543).[15] We presented a study of ninety-one California school districts, including desegregating systems, which revealed that "those districts that decline[d] the most in white enrollment were districts that were becoming more segregated rather than desegregated" (App. 561).

Evidence introduced by the plaintiffs and the United States disclosed that many factors may have contributed to Pasadena's loss of white students (App. 377–379, 505). These factors included the declining birth rate and an economic retrenchment that had diminished the availability of employment in the Pasadena area. The evidence indicated that some of the loss in the months prior to implementation of the Pasadena Plan could have been anticipated (App. 393, 540–542) because the trend of declining white enrollment in Pasadena had closely paralleled the California statewide trend for several years (App. 393, 505),

[14] See Tr. Feb. 28, 1974, at pp. 493–541.

[15] Henry Marcheschi, then president of the school board, stated at the December 18, 1973, meeting of the board that "it would be folly to blame all of this drop [in white enrollment between 1970 and 1973] to [*sic*] the Pasadena Plan" (App. 298).

and that school district employees who developed the Pasadena Plan were aware of the trend at that time, in fact anticipated its continuation under the Plan, and took account of it in preparing the Plan (App. 508–510).[16] In addition, evidence demonstrated that following implementation of the Pasadena Plan the district's racial composition began to stabilize (App. 325, 380).[17]

The district court resolved the conflict in the evidence by concluding that there was no proof that any "white flight" was attributable to the Plan (App. 454). The court of appeals did not disturb these findings. See Pet. App. A8 (opinion of Ely, J.); *id.* at A26 (Wallace, J., dissenting).

In subsequent proceedings petitioners have presented evidence "that if the school district is permitted to maintain the status quo in the assignment of students under the Pasadena Plan, the ethnic changes that are occurring at the present time throughout the school district will stabilize and the ethnic imbalance now being experienced in grades 4 through 8 will disappear" (June 28, 1974, Affidavit

[16] The school board acknowledged in the Pasadena Plan itself the district's history of white enrollment decline and black enrollment increase (App. 8); the Plan provided that "minor modifications and adjustments" in student assignments might be necessary in the future (App. 9).

[17] See also App. 476 (former school board president Henry Marcheschi testifying that "what we are experiencing now is no longer a phenomenon of white flight but one of white boycott").

of Peter F. Hagen, at p. 4).[18] This prediction now has been supported by testimony given during proceedings subsequent to the decision of the court of appeals. During a hearing on September 15, 1975, concerning the conversion of a "regular" K–3 school to a "fundamental" K–3 school, school board president Dr. Henry S. Myers, Jr., testified (Sept. 15, 1975, Tr. 16):

> We had a large increase in enrollment last year, about 600 more students than we had the year before. This year I have done a lot of preliminary checking, and all of our principals report significant increases of enrollment—pre-enrollment, pre-to-school opening. It is entirely possible that we have reversed the flight, the white flight, if you will, from Pasadena and have a significant amount new enrollment.

[18] In affidavits dated December 19, 1973, and submitted in support of petitioners' January 15, 1974, motion for relief, Mr. Marcheschi and Superintendent Ramon C. Cortines stated that decreasing white enrollments and increasing minority enrollments would make it a "practical impossibility" to comply with the Pasadena Plan in the future (App. 236, 237). In an affidavit filed by petitioners in support of their June 28, 1974, motion for a stay of the district court's judgment, however, Peter F. Hagen, the district's administrative director for planning, research and development, directly contradicted the Marcheschi and Cortines affidavits. Based on his post-trial analysis of demographic and enrollment data compiled by district employees, Mr. Hagen predicted that trends evident as of June 28, 1974, would make full compliance with the Pasadena Plan progressively easier. Superintendent Cortines subscribed to that prediction in his own supporting affidavit of the same date, and both he and Mr. Marcheschi testified, at trial, that full compliance with the Pasadena Plan can be achieved (App. 468–469, 473). The June 28, 1974, Hagen and Cortines affidavits have been lodged with the Clerk of this Court.

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See also *id.* at 146 (Peter Hagen, the school district's administrative director of planning, research and development, testifying that as of February 1975 Pasadena's enrollment in grades K–3 was only 39.1 percent black, and in grades 4–6 was 43.8 percent).

c. Petitioners offered evidence in an effort to establish that the Pasadena Plan had been educationally counterproductive. They attempted to show that the performance of the district's students on certain standardized tests had declined and that the performance of its black students had not improved vis-a-vis that of their white counterparts in either the school district or the Nation as a whole (App. 520–523; Pet. Exhs. AC, AK, AL, AM, AN, AO).[19]

The United States presented evidence tending to show that the plan has been an educational success in several ways. The learning environment of the district's schools, as measured by student self-esteem, attitude toward school, anxiety, and other criteria, has been stable (App. 389–391, 543–549; U.S. Exh. 24).[20] Serious disciplinary problems have been few (App. 383–385). And, under the Plan, the district has been able successfully to implement a variety of innovative educational programs and "alternatives," including special programs at its regular

[19] "Pet. Exh." refers to exhibits introduced by petitioners at the February–March 1974 hearing of this case. "U.S. Exh." refers to exhibits introduced by the United States at that hearing.

[20] Indeed, the study conducted by our expert witness disclosed a significant decrease in the anxiety level of black children between 1972 and 1973 (App. 546–547).

schools and the creation of special schools (App. 341–346, 356–375, 382, 512–513, 525, 527–528).[21]

We also presented expert testimony on academic achievement. Our expert analyzed petitioners' achievement charts and concluded that the rate of black and white students' academic growth disclosed by those charts properly should be viewed as a net gain for black students, an indication of academic success not evident prior to desegregation (App. 557–560, 564–565). In addition, the expert pointed out that the district's white students have suffered no academic setback, as compared with national norms, during the desegregation process (App. 564–566).

The district court was unpersuaded by petitioners' effort to demonstrate that the Pasadena Plan has been an educational failure (App. 458), and none of the judges of the court of appeals found any error in the district court's resolution of the issue.

The district court's resolution of this dispute has been supported by the testimony of Dr. Myers in a subsequent hearing. Dr. Myers testified (Sept. 15, 1975, Tr. 17–18, 33):

> We believe that the successes of the fundamental school, the spectacular upturn in test scores, particularly for black students and others as well, but the narrowing of the gap, the disparity between the Anglos and the blacks which, in our opinion, is the answer to the segregation problem; the results have been so spec-

[21] Superintendent Cortines testified that such innovations can continue, and the kinds of "alternatives" envisioned by the Alternative Plan (see App. 240, 243–244) can be implemented, under the Pasadena Plan (App. 511–512, 527–529).

tacular in narrowing this gap in keeping the black students' scores from dropping off that we just think that it is vital that we get the black community more involved in fundamental basic-type education.

* * * * *

We reversed our test scores dramatically after a horrible decline for the last five or six years, a dramatic upturn in all areas, not only the fundamental schools, but because of the competition that the fundamental school is giving the regular schools, their scores turned up as well.

d. The Plan has succeeded as an instrument of desegregation (see App. 403–409, 416–417, 441–447). The school board has not, however, entirely succeeded in complying with the literal terms of the district court's order that there be "no majority of any minority" in any school. During the 1971–1972 school year the black enrollment at Loma Alta school exceeded 50 percent of that school's total enrollment (App. 445, 585–586). By October 1972 four schools (Edison, Franklin, Loma Alta, and Sierra Mesa) had black enrollments in excess of 50 percent of their respective total enrollments (App. 403, 404, 406, 407, 585–586). A fifth school (Eliot Junior High) joined this group a year later (App. 417, 585–586). There has, therefore, been a slight deviation from the student assignment provisions of the Plan and the 1970 order, as interpreted by the district court.[22]

[22] The plaintiffs and the United States had not understood the decree to require continued adherence to the "no majority of any minority" provision (App. 268–269; see also Pet. App. A16, n. 4).

3. THE PROPOSED "INTEGRATED ZONE/EDUCATIONAL ALTERNATIVES PLAN"

In a recall election of October 13, 1970, Mr. Henry Marcheschi and two other candidates for school board membership unsuccessfully attempted to unseat the three board members who had voted against appeal of the district court's 1970 judgment (App. 453).

Mr. Marcheschi ultimately was elected to the board in the spring of 1971 (App. 471–472). He testified that "very early in [his] tenure as a board member" he began to develop alternatives to the Pasadena Plan (App. 474, 498). The first of the Marcheschi alternative proposals—"The New Pasadena Plan: A Recommended New Approach to Achieve Voluntary Integration and Equality of Educational Opportunity in the Pasadena Unified School District" (App. 422–434, 474, 570–580)—was presented to the school board in the fall of 1971 (App. 376, 475). The second proposal—"Neighborhood School/Integrated Zone Plan for Grades K–6: A Proposed Plan to Restore Neighborhood Schools [etc.]" (App. 474–475, 587–599)—was presented on January 9, 1973 (App. 340, 475).

Both of these proposals were designed to create freedom of choice in student enrollment; they were an outgrowth of their author's commitment to the neighborhood school concept (see, *e.g.*, App. 497) and of his belief that, although voluntary integration is desirable, racial separation in public education is preferable to desegregation compelled by court order (see App. 480–484).

Petitioners Myers, Newton and Vetterli were elected to the school board on March 3, 1973 (App. 468) on a pledge to "restor[e] neighborhood schools [and] eliminat[e] excessive educational experiments on our children" (App. 283). Mr. Marcheschi became president of the board in July 1973 (App. 472).

On July 10, 1973, the school board, on the votes of petitioners Myers, Newton and Vetterli, voted to appoint three persons to administrative positions in the school system without following the staff recruitment and selection procedures of the Pasadena Plan. This action has become the basis for a contempt citation by the district court (384 F. Supp. 846). Later in the same month, joined by Mr. Marcheschi, this majority appointed two persons to principalships without adhering to the Pasadena Plan's procedures. For this, too, these petitioners have been held in contempt. See 384 F. Supp. at 847–851; App. 514–518.[23]

The student enrollment plan that petitioners proposed as a substitute for portions of the Pasadena Plan[24] was primarily the work of Mr. Marcheschi (App. 473–474). He presented the Alternative Plan to the board on December 18, 1973 (App. 297) as a further development of his earlier proposals (App. 479–480). The Alternative Plan, like Mr. Marcheschi's earlier proposals, allows students to choose which

[23] The district court's judgment of contempt is *sub judice* on appeal, having been argued on November 5, 1975. Petitioners have conceded that they did not follow the plan's procedures, but have argued that they were not obliged to follow them.

[24] The proposed substitute, referred to as the "Alternative Plan," is reproduced at App. 239–245.

school they will attend, and it was designed to facilitate the selection by students or their parents of neighborhood schools.[25]

The Alternative Plan is limited to student enrollments in elementary (K–6) schools (App. 241–242).[26] It would eliminate specific school attendance boundaries in favor of "four racially and ethnically balanced zones * * * whose boundaries [would] coincide with the four existing areas on which the present Pasadena Plan is designed" (App. 241). Students would be permitted to attend any school within the zone of their residence; necessary transportation would be provided (App. 241). The present division of elementary schools into "primary" and "upper grade" schools would be replaced by the traditional K–6 organization, in order to "provide a sufficient number of school sites within each zone from which parents can choose the type of education most appropriate for each of their children" (App. 239).

The Alternative Plan proposes the "establishment of unique educational alternatives at each K–6 school site in addition to the ongoing traditional program being taught there" (App. 239). Parents could choose to place their children in either the regular or the "unique alternative" program at their chosen school (see App. 485). Although it briefly describes some possible "unique alternatives" (see App. 240, 243–244), the Alternative Plan is skeletal. It does not ex-

[25] Both the Alternative Plan (App. 239, 241, 242; cf. App. 299, 355) and Mr. Marcheschi's testimony (App. 479, 481, 482–484, 488–490, 497, 500, 502) make this clear.

[26] The Pasadena Plan would be retained for grades 7–12.

plain, for example, what "alternatives" would be offered, at what schools they would be offered, or whether each of the "unique" programs ultimately offered by the district would be represented in each zone. Mr. Marcheschi testified that these decisions had not yet been made (App. 484–485).

Petitioners hope that the "unique alternatives" will encourage voluntary integration by acting as "magnets," that is, by attracting students of varied backgrounds from all parts of each zone (App. 239). Petitioners offered no evidence that this would in fact occur, however, and conceded that if parents and students select "neighborhood" schools, it will not occur. The Alternative Plan acknowledges that "the ethnic balance at some sites may be altered from what it is at present" (App. 241);[27] nothing in the Plan precludes schools from regaining their former racial identifiability. When schools become racially identifiable as a result of the operation of the Alternative Plan, it provides for part-time "pairing" of "sister schools" of divergent racial compositions. For one-half day each week, students could visit the "sister school" to take advantage of any special programs at that school (App. 241).

The Alternative Plan does not establish what procedures would be followed to determine students' initial school selections or what would be done in the event more students chose a particular school than that school could accommodate. Mr. Marcheschi

[27] See also App. 299, 487–488.

testified that "the first priority for seats in [each] school would go to children who are in the neighborhood served by that school and the priority would also extend equally to children whose race is in the minority in that particular school" (App. 479). He indicated, however, that "[t]here is no way * * * to anticipate" enrollments by race under the Alternative Plan, because parents' choices of schools cannot be foreseen (App. 486–487, 492). He also acknowledged that school officials do not know how many white students would be attracted back to the school district under the proposed Alternative Plan (App. 501), and he informed the district court (App. 502):

> Your honor, I believe that returning to a system which enables Caucasian families, that provides them the right to attend their neighborhood school if they so desire is a very critical and important element in reversing the actions which I have referred to as the white boycott of our school system.
>
> * * * I believe that once we have these families moving back into our neighborhood, into our district, that it seems to me we at least have them here and can begin to be persuaded and can begin to apply the kind of incentives that it will be necessary to apply to get them to move out of their neighborhood school.

Superintendent Cortines testified that he preferred the Pasadena Plan to the Alternative Plan (App. 519, 525) and that the one-half day pairing arrangement envisioned in the Alternative Plan "does not provide

the kind of interchange among the different ethnic groups that I believe is worthwhile" (App. 526).

The district court found that at least some schools would regain their former racial identifiability if the Alternative Plan were implemented (App. 455–457; cf. App. 329, 395, 396, 485–486, 499–500, 583)[28] and that an effective implementation of the Alternative Plan would require as much (or more) student transportation as has proved necessary under the Pasadena Plan (App. 458; cf. App. 492–493, 513). Neither of these findings was disturbed by the court of appeals. Judge Ely expressly agreed that the Alternative Plan would produce racially identifiable schools (Pet. App. A8, A14); Judge Wallace, apparently agreeing (*id.* at A26–A27), disputed only the standard used by the district court to evaluate the legal consequences of that effect.

C. THE DISTRICT COURT'S OPINION

The district court denied petitioners' January 15, 1974 motion in its entirety (App. 452–459).

The district court offered several reasons for declining to dissolve its injunction and terminate its supervision over the Pasadena schools. It found that there had not been full compliance with the Pasadena Plan because several schools were operating in violation of the "no majority of any minority" rule (App. 454). It concluded that the school officials had resisted

[28] In the Pasadena Unified School District neighborhood schools would be, to a substantial degree, racially identifiable schools (App. 329, 471, 506–507, 583, Rear Folios).

the Plan and had declined to cooperate with it, so that it would be unreasonable to infer that, if left to their own devices, they would assiduously foster desegregation (App. 458). It observed that, if petitioners were allowed to return to a "neighborhood school" policy or a "freedom of choice" plan, much of the Pasadena Plan would be undone and the schools would regain their former racial identifiability (App. 455–456, 459). And it found that the Pasadena Plan had not become an instrument of wrong: it was not demonstrably the cause of "white flight" (App. 454), and it was not demonstrably the cause of any educational deficiencies (App. 458). If the latter were the case, the court reasoned, the educational deficiencies could be corrected by making suitable alterations in the Pasadena Plan, without the need to dissolve it (App. 457).

The district court also declined to replace the Pasadena Plan with the Alternative Plan, holding that the Alternative Plan would be unsuccessful as an instrument of desegregation (App. 455–456). Referring to petitioners' argument that the Pasadena Plan had been the cause of "white flight" and that the Alternative Plan could both solve this problem and desegregate the schools, the court answered (App. 457, footnote omitted):

> Hope may spring eternal, but realism exposes the folly of the belief that one who left a school district because his children were forced to attend schools with Negro children would now voluntarily choose that alternative.

"Freedom of choice" plans had failed before in Pasadena and elsewhere in California, the court found, and it concluded that petitioners had not demonstrated that such a plan would not fail again. Finally, the court found that if the Alternative Plan were to be an effective plan of desegregation it would require as much busing of students as was being used to implement the Pasadena Plan (App. 458).

D. THE COURT OF APPEALS' OPINIONS

A divided court of appeals affirmed and remanded for further proceedings; each member of the panel wrote a separate opinion (Pet. App. A1–A33). None of the opinions questions the district court's findings of fact.

Judge Ely began by emphasizing "the narrow ambit of * * * review" (Pet. App. A2). The propriety of the original judgment and injunction, and of the Pasadena Plan itself, were not before the court, Judge Ely concluded (*ibid.*):

> The only question before us now is whether the District Court erred in its determination * * * that events and circumstances occurring * * * since the Pasadena Plan was ordered implemented do not justify relief from the January 23, 1970, Decree * * * or the substitution of a substantial alteration of the original Pasadena Plan.

Judge Ely wrote that two tests governed the exercise of the district court's discretion to retain jurisdiction and continue its injunction (Pet. App. A6–

A7): whether the dangers that caused the issuance of the injunction had been attenuated to a shadow, and whether intervening events had converted the injunction into an instrument of wrong. He found that the district court had not abused its discretion in the evaluation of either factor. The dangers of segregation had not been sufficiently attenuated, Judge Ely thought, in light of the violations of the "no majority of any minority" rule and in light of the perceived intransigence of the school board, culminated by the submission of a substitute plan that the board should have known was inadequate to eliminate the effects of its earlier acts of segregation. Nor had the injunction become counterproductive; petitioners' assertions that it had caused "white flight" and educational degradation had been discredited by the district court in findings that were not clearly erroneous (*id.* at A8–A10). Judge Ely concluded that because it was not yet "clear" that disestablishment of the dual school system had been achieved, the district court was required to retain jurisdiction (*id.* at A11–A12).

As to the proposal to substitute the Alternative Plan for portions of the Pasadena Plan, Judge Ely reasoned that, once it had been established that the district court was empowered to retain jurisdiction over the Pasadena schools, it followed that the court had substantial equitable discretion to select an effective remedy (Pet. App. A13). The district court properly exercised that discretion in preferring the Pasadena Plan, which had been devised by the school board in 1970, over the school board's 1974 submis-

sion, because the latter held out less promise of successfully producing desegregation. Judge Ely concluded that, whatever virtues the Alternative Plan may possess, there was ample support for the district court's conclusion that it would not discharge petitioners' duty to achieve the greatest possible amount of desegregation (*id.* at A14), and that the district court therefore properly rejected it.

Chief Judge Chambers wrote (Pet. App. A20) that "a school district surely should not be kept under injunctions of a court forever." He found, however, that because the school board had not fully discharged its duty of compliance with the district court's unappealed 1970 injunctive degree, the judgment must be affirmed. Judge Chambers concluded (Pet. App. A21):

> I interpret Judge Ely's opinion as requiring a termination of the mandatory injunction within a very short time after the school [*sic*] again gets in compliance and I think the message is clear to the district court.
>
> * * * I have some doubt that one will find any de jure segregation after the decree has been complied with again—if all that is done is to let residence patterns shift by themselves.

Judge Wallace dissented. In his view, the district court erroneously had equated *de jure* and *de facto* segregation (Pet. App. A23, A26) and consequently had neglected to consider the question "whether the segregation foreseeable upon dissolution of the injunction is attributable to intentionally segregative actions of the school district" (*id.* at A27, footnote

omitted). Believing that a desegregation decree must be dissolved, and the jurisdiction of the district court terminated, once a school board demonstrates that the effects of its earlier segregative acts have been eradicated (*id.* at A27–A28), Judge Wallace would have remanded "for a determination whether de jure segregation still exists in the Pasadena schools" (*id.* at A30). Under this proposed remand, a "heavy burden of proof" (*ibid.*) would have been imposed upon petitioners, who would have been required to prove both the extent of segregation caused by the school board's acts and that all of the effects of these acts had been overcome. If petitioners can carry those burdens, Judge Wallace wrote, the district court should terminate its active supervision.

All three judges of the court of appeals expressly disapproved both any perpetual application of the "no majority of any minority" provision of the 1970 judgment and any requirement of annual redistricting in response to demographic changes. See Pet. App. A11 (opinion of Ely, J.); *id.* at A20 (Chambers, J., concurring); *id.* at A25 (Wallace, J., dissenting).

SUMMARY OF ARGUMENT

I

A. Most of petitioners' arguments are not pertinent to the consideration or decision of this case. Petitioners' repeated assertions that this case involves the pursuit of racial balance for its own sake are inaccurate, for the district court's 1970 opinion

catalogued extensive and systematic segregatory conduct by school officials that contributed substantially to the creation of racially identifiable schools in Pasadena. Those pervasive acts of segregation, quite similar to those considered by this Court in *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U.S. 189, required the district court to conclude that a dual school system had been established by law, and consequently to take whatever action was required to eliminate racial discrimination "root and branch" (*Green* v. *County School Board,* 391 U.S. 430, 438). The "no majority of any minority" provision in the 1970 decree was, in 1970, "a useful starting point in shaping a remedy to correct past constitutional violations" (*Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 25).

To the extent the "no majority of any minority" provision of the decree may have become a continuing requirement of racial balance, it has properly been disapproved by the court of appeals. Likewise, the court of appeals correctly disapproved any requirement that students be reassigned to different schools annually in order to compensate for demographic changes. Petitioners disregard these aspects of the court of appeals' decision; their insistent attack upon statements of the district court disapproved by the court of appeals is wholly gratuitous.

Petitioners also intimate that this is a "busing" case and request the Court to determine whether, and to what extent, federal courts can require school authori-

ties to use transportation to implement a system of student assignments. Concern about the use of transportation is legitimate. But the current law of equitable remedies (see, *e.g., Swann, supra*) authorizes the use of transportation in a case such as this. In the district court petitioners did not challenge particular transportation requirements, but attempted instead to prove that the entire student assignment plan (rather than its transportation component in particular) was educationally disadvantageous and had led to "white flight." They failed in their proof, and the court of appeals held that the district court's findings were not clearly erroneous.

We submit that the only three points requiring consideration by the Court are whether the district court was required at the present stage of the case to terminate entirely its supervision over the Pasadena schools; whether, if some supervision is still appropriate, it can include a "regulatory" desegregation plan; and whether, if regulatory supervision is appropriate, the district court should have substituted the Alternative Plan for the Pasadena Plan.

B. As to the first point, this Court has repeatedly recognized that full implementation of the constitutional guarantees of the Fourteenth Amendment cannot be achieved unless the district courts retain jurisdiction until it is clear that disestablishment of the dual school system and all of its effects has been accomplished. Even if petitioners were correct in their

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argument that the Pasadena schools became "unitary" the moment the Pasadena Plan was implemented, this would not support petitioners' claim for termination of the district court's "passive" supervision. Continuing supervision, with or without judicial enforcement of a desegregation plan, is necessary to deter future acts of segregation by making the contempt power available and allowing the district court promptly to rectify such acts if they occur. If an injunction is appropriate even when individuals have voluntarily and completely desisted from illegal acts (see *United States* v. *W. T. Grant Co.,* 345 U.S. 629, 633), it follows that continuing judicial supervision of some sort is appropriate here, where the injunction was necessary to compel the school officials to abandon their unconstitutional practices. Judicial supervision should last until a unitary school system has been achieved and maintained for a significant length of time without additional judicial compulsion.

C. Petitioners direct a major challenge to the district court's continuation of active or regulatory supervision, including the enforcement of a mandatory desegregation plan. They contend that even if such regulatory supervision was necessary in 1970 it should now be discontinued.

Injunctions in desegregation cases, like other injunctions, are subject to the usual standards governing the equitable powers of federal courts. *Milliken* v. *Bradley,* 418 U.S. 717, 737–738; *Swann, supra,* 402

U.S. at 16. A motion for modification or dissolution of a desegregation plan therefore is an appeal to the equitable discretion of the district court. The district court may modify the injunction because of an intervening and unexpected change of circumstances, because it has achieved its purpose, or because it has become an "instrument of wrong" (*United States* v. *Swift & Co.,* 286 U.S. 106, 115). None of these conditions is present in this case.

The original decree plainly has not yet achieved its purpose. Some decisions of school officials that create or maintain racially identifiable schools have long-lasting effects. For example, school siting and capacity decisions often will have racial effects that persevere for much or all of the building's lifetime. For this and other reasons, the findings of the district court provide substantial support for the conclusion of the courts below that the past segregation in the Pasadena schools would have substantial, lingering effects. Since petitioners had not come forward with an adequate alternative remedy for those effects, continued regulatory supervision by the district court was required. See *Swann, supra,* 402 U.S. at 28.

Nor have changed circumstances made the Pasadena Plan an "instrument of wrong." Petitioners argued in the district court that the Pasadena Plan had precipitated "white flight" and had caused deterioration in the quality of education offered by the Pasadena schools. But the district court found these arguments

to be unsupported by the facts, and the court of appeals concluded that its findings are not clearly erroneous. Petitioners therefore have not established the foundation for their contention that the regulatory supervision of the district court must come to an end.

More than 100 school systems have demonstrated that the effects of segregation have been eliminated to the fullest extent possible and have been released from the regulatory supervision of the district courts. Such relief is a goal shared by school systems, the federal courts (see *Swann, supra*), the Congress (see 20 U.S.C. (Supp. IV) 1718), and the federal Executive Branch. Petitioners will have ample opportunity to obtain release from regulatory supervision once the vestiges of segregation have been eliminated from the Pasadena schools.

D. If, as we have argued, it was proper for the district court to continue its regulatory supervision of the Pasadena schools, it follows that it was proper for the court to reject the Alternative Plan. The Alternative Plan is little more than a disguised abandonment of active judicial supervision, for it has no provision for overcoming the effects of discriminatory school siting and capacity decisions and other vestiges of the *de jure* segregation carried on by school authorities. The Alternative Plan is essentially a "freedom of choice" plan. "Freedom of choice" plans have been unsuccessful in ending segregation in Pasadena and elsewhere in California,

and the district court properly concluded that nothing in the Alternative Plan held out any realistic probability of greater success.

II

The private plaintiffs have graduated from the Pasadena schools. Whether or not this moots the case as to the private plaintiffs, the presence of the United States as a plaintiff is sufficient to preserve a live case or controversy. The United States intervened pursuant to 42 U.S.C. 2000h–2, which provides that "the United States shall be entitled to the same relief as if it had instituted the action." In this case the United States sought desegregation of the entire school system, relief more extensive than had been sought by the private plaintiffs. The school authorities argued that the United States should be confined to the relief that had been sought by the private plaintiffs; the court of appeals rejected that argument, holding that our complaint in intervention properly brought into the case "the entire Pasadena Public School system" (415 F. 2d at 1243). The Attorney General has certified that this case is of general public importance—in other words, that the United States has an interest in addition to that of the private plaintiffs. Such a general public interest survives their graduation.

ARGUMENT

I

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DECLINING TO DISSOLVE ITS INJUNCTION, TERMINATE THE PASADENA PLAN, OR IMPLEMENT THE PROPOSED ALTERNATIVE PLAN

A. MOST OF PETITIONERS' ARGUMENTS ARE NOT PROPERLY PRESENTED IN THE PRESENT POSTURE OF THIS CASE

This is a narrow case. Neither the correctness of the district court's 1970 judgment that the Pasadena school system had been segregated by the deliberate acts of its officials, nor the initial validity of the court's 1970 directive that no school in the system enroll "a majority of any minority students" (App. 3–4), was before the court of appeals. Yet petitioners seek to raise those issues here (Pet. Br. 3, 11–18), contending that the decisions of the district court are inconsistent with *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1. Petitioners direct most of their argument against certain *dicta* in the opinions of the district court [29] and a remark that the district court made during a hearing.[30] But the *dicta*

[29] See App. 456, n. 10, in which the district court equates *de facto* and *de jure* segregation. Cf. App. 99, n. 4 ("[r]acial segregation and racial imbalance are two names for the same phenomenon, racial separation").

[30] See App. 270, where the district court stated during an oral argument that the Pasadena Plan "meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena."

of the district court are not on review here; the court of appeals has relieved petitioners of the portions of the district court's order to which they might legitimately object, and has disapproved the district court's statements upon which petitioners dwell. As a result, most of the arguments of petitioners are misdirected.

1. Petitioners proceed on the assumption that this case is one in which the district court has sought to bring about "racial balance" for its own sake. They contend, for example, that "[t]he failure of the Pasadena School Board to correct * * * racial imbalance was the primary basis on which the system was found to be a dual system" (Pet. Br. 3; see also Pet. Br. 11–13). This is a gross misinterpretation of the proceedings in this case. Absence of racial balance was not the basis for the original finding of *de jure* segregation.

In 1970 the district court was presented with extensive proof, and made detailed findings, that over a period of fifteen years the Pasadena school board had engaged in a series of deliberate, unconstitutionally discriminatory actions that created significant racial separation of students and faculty, particularly in elementary schools. See App. 97–126, 128, and our summary of these findings at pages 6–9, *supra.* The actions described by the court—among them, racial gerrymandering and the manipulation of student assignments designed to lock black students into heavily black schools and to avoid assigning whites to such schools, the transportation of white

students past under-enrolled majority-black schools to more distant "white" schools, the granting of racially-motivated transfer requests that intensified racial segregation, the practice of assigning most black teachers and black substitute teachers to black schools and permitting white substitutes to shun those schools, and the racially-motivated manipulation of school construction and transportable classroom placement—were deliberate acts that served to identify certain schools as intended, by the school board, for blacks, and others as intended for whites. *Green* v. *County School Board,* 391 U.S. 430, 435; *Swann, supra,* 402 U.S. at 18. Those pervasive, deliberate acts of segregation, causing the district's schools to become vehicles of racial discrimination, closely paralleled the segregatory acts which this Court held in *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U.S. 189, to require a district court to conclude that a dual school system had been established by law. Accordingly, the board's pattern of discriminatory conduct here bestowed upon the district court

> the affirmative duty to take whatever steps might be necessary to convert [Pasadena] to a unitary system in which racial discrimination would be eliminated root and branch.

Green, supra, 391 U.S. at 437–438.

The 1970 decree thus responded to well-entrenched, systemic violations of the Fourteenth Amendment. The "no majority of any minority" provision of the 1970 decree was, in 1970, "a useful starting point in

shaping a remedy to correct past constitutional violations." *Swann, supra,* 402 U.S. at 25.

2. Petitioners nevertheless contend that, by 1974, the "no majority of any minority" requirement had become nothing more than a requirement of racial balance for its own sake (Pet. Br. 11–13). Petitioners contend that this requirement is a rigid racial quota (Pet. Br. 11), and that its status as such is demonstrated by the district court's statement during a hearing in 1974 that "at least during my lifetime there [will] be no majority of any minority in any school in Pasadena" (App. 270). However, each of the judges of the court of appeals (quite properly, in our view) disapproved both the district court's statement and the "no majority of any minority" rule, to the extent that either indicated a continuing, rigid insistence upon some particular degree of racial balance. See Pet. A11 (Ely, J.); *id.* at A20 (Chambers, C.J., concurring); *id.* at A25 (Wallace, J., dissenting). Petitioners' insistent attack upon these statements of the district court is therefore wholly gratuitous.

3. Petitioners also contend that the district court lacks the power to compel them to undertake the annual reassignment of students in order to achieve a particular degree of racial balance (Pet. Br. 13–14, 16–18). To the extent such a requirement may be imputed to the district court, it was an outgrowth of the "no majority of any minority" provision in the 1970 judgment. It, too, has been disapproved by the court of appeals. See Pet. App. A11 (Ely, J.); *id.*

at A20–A21 (Chambers, C.J., concurring); *id.* at A25 (Wallace, J., dissenting). The court of appeals correctly held that there is no need for annual student reassignment to achieve the maximum feasible degree of racial balance. Accord, *Mapp* v. *Board of Education,* 525 F. 2d 169 (C.A. 6); *Calhoun* v. *Cook,* 522 F. 2d 717 (C.A. 5), rehearing denied, 525 F. 2d 1203 (C.A. 5); *Morgan* v. *Kerrigan,* C.A. 1, No. 75–1184, decided January 14, 1976, slip op. 32–33. A redrawing of school attendance zones after the desegregation decree is first approved may sometimes be necessary in order to eliminate the continuing effects of past segregation, and, to that extent, the district court in this case retains the authority to revise its injunction. See 20 U.S.C. (Supp. IV) 1707.[31] But this case no longer presents the problem of redrawing of attendance zones for any other purpose. As Chief Judge Chambers wrote (Pet. App. A21), it is not an act of segregation for racial imbalance to occur under a court decree "if all that is done is to let residence patterns shift by themselves." See also *Swann, supra,* 402 U.S. at 31–32.

4. Petitioners intimate that this is a "busing" case requiring the Court to decide whether, and to what extent, federal courts can require school authorities to use transportation to implement a system of student assignments (Pet. Br. 4–5, 11). Cf. *Swann, supra,* 402 U.S. at 30–31.

[31] 20 U.S.C. (Supp. IV) 1707 provides that reassignment is not necessary if residential patterns change *after* a district court has determined that all vestiges of segregation have been eliminated.

The concern about transporting school children to accomplish desegregation is a legitimate one that may call for the further attention of the Court in an appropriate case. But petitioners made no record in the district court that would now permit a reexamination of busing as a remedy on the basis of experience with that remedy here,[32] and in light of accumulated experience in other communities across the nation.[33] The current law of equitable remedies in school desegregation cases supports transportation in a case such as this. *Swann* v. *Board of Education, supra; Davis* v. *School Commissioners,* 402 U.S. 33. It is, of course, always open to litigants to seek judicial reassessment of precedent, but the materials for reassessment must be provided. To do so is not to question *Brown I's* dispositive constitutional objection to *de jure* segregation. *Swann* shows that transportation is an equitable remedy whose "task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." 402 U.S. at 16.

[32] To the extent that petitioners attempted to show in the district court that the Pasadena Plan had caused "white flight" or deterioration in educational quality, they failed in their proof. See pages 11–16, *supra*; pages 54–55, *infra.*

[33] See, *e.g.*, Symposium, *The Courts, Social Science, and School Desegregation,* 39 L. and Contemp. Prob. 1–432 (1975); Goodman, *De Facto School Segregation: A Constitutional and Empirical Analysis,* 60 Cal. L. Rev. 275 (1972); Pettigrew, *Racial Discrimination in the United States* (1975); St. John, *School Desegregation Outcomes for Children* (1975); Comment, *School Desegregation After Swann: A Theory of Government Responsibility,* 39 U. Chi. L. Rev. 421 (1972); Mills, *The Great School Bus Controversy* (1973).

Brown II also remarked the "practical flexibility" that characterizes equitable decrees. 349 U.S. at 300. If, as appears to be the case, petitioners now seek to challenge court-ordered transportation as a futile or damaging response to *de jure* segregation, they did not focus their case below to that end.[34] Their proof below was not guided by an articulation of the purpose of student transportation under a decree—whether it is designed to produce the approximate degree of integration that would have existed absent a violation of the Fourteenth Amendment, to repair psychological injury inflicted by the state, to cure educational deficiencies traceable to *de jure* segregation, or perhaps to achieve some other or additional purpose (see n. 42, *infra*). Accordingly, petitioners failed to prove that transportation lacks utility in achieving the articulated remedial goal. In its present

[34] Instead, in the board's closing argument during the hearings on its present motion in the district court, counsel for the board stated (App. 568):

"* * * I as a lawyer in this court have not regarded the busing problem or the busing question as an issue in this case. We are going to have busing, your Honor. The board intends to continue busing. Any child may bus, as I have said, under the alternative plan within his zone."

The district court found that "the evidence shows that as much or more busing would be necessary to accomplish the ends of an integrated school system under the Alternative Plan as is currently required to achieve the same ends under the Pasadena Plan" (App. 458). See App. 492–493, 513.

posture, this case is not an appropriate vehicle for the kind of reassessment petitioners ask this Court to undertake.

We submit, therefore, that much of petitioners' presentation in this Court is superfluous. This case in its present posture does not require the Court to pass upon the arguments we have discussed above. The case does, however, require disposition of three points: (1) whether the district court was required to terminate entirely its supervision of the Pasadena schools; (2) whether, if continuing supervision is appropriate, that supervision can include a "regulatory" injunction; and (3) whether, if "regulatory" supervision is appropriate, the district court should have substituted the Alternative Plan for the Pasadena Plan. We discuss these points in turn.

B. THE DISTRICT COURT IS REQUIRED TO RETAIN JURISDICTION IN A DESEGREGATION CASE UNTIL THE EFFECTS OF SEGREGATION HAVE BEEN ELIMINATED AND FURTHER DISCRIMINATORY ACTS ARE NOT A FORESEEABLE POSSIBILITY

In a desegregation case the district court "has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States*, 380 U.S. 145, 154. In the exercise of that power and duty

a district court usually must retain jurisdiction over the case for a lengthy period of time, a practice this Court has discussed and approved as a necessary tool to achieve the goal of "eliminat[ing] from the public schools all vestiges of state-imposed segregation." *Swann, supra,* 402 U.S. at 15.

In 1955 this Court recognized that full implementation of the constitutional commands of *Brown* v. *Board of Education,* 347 U.S. 483 (*Brown I*), "may require solution of varied local school problems." *Brown* v. *Board of Education,* 349 U.S. 294, 299 (*Brown II*). Accordingly, it directed the courts to "retain jurisdiction * * * [d]uring this period of transition" (*id.* at 301). Retention of jurisdiction by district courts in school desegregation cases has been required since *Brown II*. In *Raney* v. *Board of Education,* 391 U.S. 443, 449, the Court wrote:

> In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved.

And in *Green, supra,* 391 U.S. at 439, the Court stated:

> the [district] court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed.

See also *Swann, supra,* 402 U.S. at 21, 28. Cf. *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19, 21; *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 290, 292 (Harlan, J., concurring).

The need to retain jurisdiction until the objectives of the decree have been achieved is plain. In "a system that has been deliberately constructed and maintained to enforce racial segregation" (*Swann, supra,* 402 U.S. at 28) it is not enough to undo that segregation for an instant. The deeply ingrained nature of state-imposed racial separation, which has been caused by deliberate acts of elected officials that serve to stamp an enduring racial label on each school, makes it necessary and proper for the court to supervise the desegregation process, not only to achieve desegregation, but also to ensure the perpetuation of that status (*i.e.,* a status in which *de jure* segregation and the effects of past *de jure* segregation have been eliminated; see pages 49–58, *infra*).

So far as we are aware, only one school district ever has been completely released from the jurisdiction of a district court upon successfully desegregating its schools.[35] Other school districts have been released from the active supervision of the district court (see pages 56–57, *infra*). Because the defendants in school desegregation cases are public officials, and because federal courts should not become permanently

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[35] In *Mays* v. *Sarasota County Board of Public Instruction,* M.D. Fla., No. 4242, decided September 3, 1975, the district court found that (Order, p. 2) "[v]estiges of state imposed segregation have been removed from the operation of the public school system in Sarasota County. There is no evidence countering the conclusion that the unitary school system now established in Sarasota County has stabilized." Accordingly, the court dismissed the action. The plaintiffs expressly consented in a memorandum that praised the defendants' fulfillment of their constitutional duty.

involved in the administration of local schools, detailed "regulatory" injunctions ultimately should give way to general permanent injunctions against racial discrimination. In this latter or "passive" stage the district court would act only if one of the parties to the case alleged that the officials were violating its general injunction against discrimination.

Petitioners have sought, however, not only termination of the regulatory supervision of the district court, but also termination of its general injunction. In support of this petitioners argue here (Pet. Br. 4, 14–16), as they did in the district court, that the Pasadena schools became "unitary" the moment the Pasadena Plan was implemented. Even if this argument were correct,[36] it would not support petitioners' claim for termination of the district court's passive supervision. Continuing supervision is necessary to deter future acts of segregation by making the contempt power available and by insuring prompt rectification if such acts occur. Since the school board has demonstrated a proclivity to engage in such unconstitutional acts (the injunction otherwise would not have been necessary), the danger of repetition is present whether or not Pasadena is, at this moment, a "unitary" school system.

Even if petitioners had voluntarily and completely desisted from their pattern of unconstitutional acts, it still would be appropriate to enjoin them from future unconstitutional acts. *United States* v. *W. T. Grant*

[36] But see pages 51–53, *infra*.

Co., 345 U.S. 629, 633. *A fortiori* it is appropriate to continue judicial supervision when judicial intervention was necessary to force the school board to abandon its unconstitutional practices. The judicial supervision should last until a unitary school system has been achieved and maintained for a significant period of time without the need for additional judicial intervention. Whether complete dissolution would then be appropriate should rest, as do other matters of equity, in the informed discretion of the district court.[37]

C. CONTINUOUS AND ACTIVE SUPERVISION BY THE DISTRICT COURT IS NECESSARY UNTIL IT CAN DETERMINE WITH CONFIDENCE THAT THE VESTIGES OF SEGREGATION HAVE BEEN ELIMINATED

Petitioners direct their major challenge not to the district court's retention of jurisdiction, but to the continuation of active or regulatory supervision of the

[37] Courts of appeals have declined to dissolve general prohibitory injunctions after even extended periods of compliance. See, *e.g.*, *Walling* v. *Harnischfeger Corp.*, 242 F. 2d 712, 713 (C.A. 7) (dissolution refused after 12 years of compliance because "compliance is just what the law expects"); *Goldberg* v. *Ross*, 300 F. 2d 151 (C.A. 1) (dissolution refused after eight years of compliance); *Wirtz* v. *Graham Transfer and Storage Co.*, 322 F. 2d 650 (C.A. 5) (dissolution refused after six years of compliance); *Tobin* v. *Alma Mills*, 192 F. 2d 133 (C.A. 4) (dissolution granted after nine years on showing of "specific hardship"). See also *Brooks* v. *County School Board*, 324 F. 2d 303 (C.A. 4) (dissolution denied in the absence of hardship caused by the injunction). See generally Tomlinson, *Modification and Dissolution of Administrative Orders and Injunctions*, 31 Md. L. Rev. 312 (1971); Comment, *Dissolution and Modification of Federal Decrees on Grounds of Change of Attitude*, 25 U. Chi. L. Rev. 659 (1958).

affairs of the school system. Their reliance on what we may characterize as an "instant unitariness" theory (see, *e.g.*, Pet. Br. 4) is both unsupported and unpersuasive.

The injunctions through which district courts carry out their duty to eliminate racial discrimination "root and branch" (*Green, supra,* 391 U.S. at 438) are, like other injunctions, subject to the usual standards governing the equitable powers of federal courts. *Swann, supra,* 402 U.S. at 16; *Milliken* v. *Bradley,* 418 U.S. 717, 737–738. Cf. *Rizzo* v. *Goode,* No. 74–942, decided January 21, 1976, slip op. 13–14. A motion for approval of a modification of a desegregation decree, or for termination of regulatory supervision, therefore, is an appeal to the equitable discretion of the court, and a federal court has the power to modify or suspend an injunction that it has imposed. *System Federation* v. *Wright,* 364 U.S. 642, 646–647; *United States* v. *Swift & Co.,* 286 U.S. 106. The power is "inherent in the jurisdiction of the chancery." *Id.* at 114; *Lubben* v. *Selective Service System Local Board No. 27,* 453 F. 2d 645, 651 (C.A. 1).

The district court need not exercise this power simply upon the request of the person enjoined, or upon his assurance of good faith compliance in the future. The court has a right to be skeptical about such assurance; it was, after all, the deliberate segregative acts of the school system that brought about the need for an injunction. The regulatory supervision of the district court need not, and indeed should not,

come to an end until the injunction has served its purpose of disestablishing the dual school system and producing a system "without a 'white' school and a 'Negro' school, but just schools." *Green, supra,* 391 U.S. at 442.[38]

Modification of the injunction may, under equitable principles, be appropriate for other reasons. A showing of changed circumstances may be sufficient to justify the exercise of the power (*Dombrowski* v. *Pfister,* 380 U.S. 479, 492), but the changes alleged either must have been "unforeseen" (*United States* v. *Swift & Co., supra,* 286 U.S. at 119) or must have caused the injunction to become an "instrument of wrong" (*id.* at 115; *Lubben* v. *Selective Service System Local Board No. 27, supra,* 453 F. 2d at 651). And, in either event, the party seeking relief from the injunction must bear the burden of proving that the change will not "prejudice * * * the interests of the classes whom * * * [the injunction] was intended to protect." *Swift, supra,* 286 U.S. at 117–118. Cf. *Chrysler Corp.* v. *United States,* 316 U.S. 556, 567 (Frankfurter, J., dissenting). Unless the "dangers, once substantial, have become attenuated to a shadow" (*Swift, supra,* 286 U.S. at 119), the district court should hesitate to grant the modification.

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[38] This, of course, does not preclude the possibility that some "one-race, or virtually one-race, schools" may properly exist within the district as a result of *de facto* segregation, once the racial identifiability of schools and other segregative effects caused by the board's discriminatory acts have been eliminated. *Swann, supra,* 402 U.S. at 26. See also *Davis* v. *School Commissioners, supra,* 402 U.S. at 36–38.

This approach has been adopted by Congress in Title II of the Education Amendments of 1974, Pub. L. 93–380, Section 219, 88 Stat. 518, 20 U.S.C. (Supp. IV) 1718 (emphasis added):

> Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws *may,* to the extent of such transportation, be terminated if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteen amendments to the Constitution, whichever is applicable, and will continue to be in compliance with the requirements thereof.

This provision commits the question of termination of regulatory supervision of transportation to the sound discretion of the district courts; indeed, it seems to recognize the propriety of continued regulatory supervision unless the court finds that the school officials will continue to adhere to the Constitution after the termination of supervision. Congress specifically rejected a proposal—similar to petitioners' position here (Pet. Br. 10, 14–16)—that would have required the termination of regulatory supervision as soon as the "court finds the defendant educational agency is not effectively excluding any person from any school because of race, color, or national origin." See S. Conf. Rep. No. 93–1026, 93d Cong., 2d Sess. 155 (1974).

The plain fact is that it takes time to eradicate the effects of segregation that has continued for tens of years. The racial identifiability of schools consists not only in their student populations, but in how they

are perceived by the people of the school district; a racial identity established at least since 1930 (in the case of several schools in this case) will not vanish simply because, for four years and under court order, some children of another race also attended the school.

Some of the decisions of a school board that create and maintain racially identifiable schools have especially long-lasting effects. School siting and capacity decisions will often have racial effects that persevere for much or all of the building's lifetime. If a school board that desires white and black children to go to separate schools builds a school in the geographic center of a "black neighborhood," and the school's capacity is exactly what is necessary to serve the children of that neighborhood, the school will be racially identifiable so long as a "neighborhood schools" policy is in force and the racial character of the neighborhood remains unchanged. Moreover, the racially-motivated decisions of a school board may in turn influence the decisions of parents to take up residence in particular neighborhoods. See *Swann, supra,* 402 U.S. at 21.

The findings in the present case provide ample support for the conclusion of the courts below that the past segregation in the Pasadena school system would have substantial, lingering effects in the absence of continued regulatory supervision by the district court. The district court expressly found that school siting and capacity decisions had been racially motivated (App. 119–123). As a consequence, "'[r]acially neutral' assignment plans proposed by school authori-

ties to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly non-discriminatory assignments" (*Swann, supra,* 402 U.S. at 28). Moreover, the board's segregatory siting and capacity decisions, combined with its other discriminatory acts, had contributed to a pattern of racial identifiability of schools which the district court found still likely to persist in the absence of remedial measures (see pages 23–24, *supra*).

In these circumstances, the district court was warranted in concluding that petitioners, who had announced a policy hostile to the Pasadena Plan and who had not come forward with a proposal for effective alternative remedial measures, should not be entrusted with the unsupervised responsibility to eradicate the continuing effects of past discrimination in Pasadena. See App. 452–454, 459. Indeed, petitioners' proclaimed desire was to implement a policy that threatened to perpetuate the effects of the board's past discriminatory conduct (see pages 59–65, *infra*). The district court therefore properly concluded that its continued, active supervision had not yet become unnecessary. "The pattern of past conduct is not easily forsaken. Where the proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct * * *" (*United States* v. *Crescent Amusement Co.,* 323 U.S. 173, 186). Continuing regulatory supervision is necessary here."[39]

In an attempt to forestall the force of all this, petitioners present two arguments: first, that the Pasadena schools became "unitary" on the day the Pasadena Plan was implemented, and second, that the Pasadena Plan has been counterproductive. Neither argument is persuasive.

The "instant unitariness" argument (Pet. Br. 4, 14–16) is wrong because it fails to acknowledge, let alone to grapple with, the continuing effects of the school board's acts of segregation. The argument fails for another reason as well: if, as petitioners assert, the "unitariness" of the Pasadena school system is attributable to the Pasadena Plan, then for the district court to terminate its supervision, and to allow petitioners to set aside the Pasadena Plan (as they

[39] A need for continuing active supervision may also have been perceived by the court upon the disclosure, during the hearings on petitioners' motion to be relieved of the court's injunction, that petitioners had appointed five persons to administrative positions in violation of the provisions of that injunction. This revelation has led to a citation for contempt. 384 F.Supp. 846, appeal pending, C.A. 9, No. 74–2530. The board's disregard of the procedures set forth in the Pasadena Plan for recruiting and selecting administrators is an indication that all vestiges of racial discrimination have not been eliminated. *Swann, supra,* 402 U.S. at 18; *United States* v. *Montgomery County Board of Education,* 395 U.S. 225, 231–232.

have indicated they would do), would be to allow petitioners to destroy the foundation for the dissolution of supervision. The very idea of "instant unitariness" is inconsistent with this Court's cases which hold that the district court must retain jurisdiction to supervise the sometimes difficult transition to a unitary system. See *Raney, supra,* 391 U.S. at 449; *Green, supra,* 391 U.S. at 439; *Swann, supra,* 402 U.S. at 21. We submit, in sum, that the imposition of a desegregation decree is not immediately equivalent to the creation of a unitary school system.[40]

This is not to say that a school system cannot become unitary while under a desegregation injunction. The injunction is intended to facilitate just such a transition from a dual school system to a unitary school system. But, as with other equitable remedies, the party seeking relief from the injunction must demonstrate that the purposes of the injunction have been served and that the discontinuation of regulatory supervision is appropriate. See pages 46–48, *supra;* see also *Swann, supra,* 402 U.S. at 32; *Raney, supra,* 391 U.S. at 449.

Perhaps, if continuing regulatory supervision is justified only by the long term effects of past segregation, petitioners would be entitled to prove that spe-

[40] Petitioners appear to argue that this case should be governed by a different rule because "[u]nlike many, if not most, desegregation plans, the Pasadena plan, effected integration in one fell swoop" (Pet. Br. 14). But all school systems that have been placed under desegregation orders since 1969 have been required to integrate "in one fell swoop." *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19.

cific short term effects[41] had been eliminated, and to seek modification of the injunction on that basis. But petitioners never attempted to make such a showing in the district court. By relying upon the "instant unitariness" theory they eschewed whatever relief properly would be available to them upon proof that some or all of the effects of past discrimination had, in fact, been eliminated. Cf. *Keyes* v. *School District No. 1, Denver, Colorado, supra,* 413 U.S. at 203–205, 208–211. Petitioners have a continuing opportunity to make such a factual showing in the district court. Until they have done so, however, it is unnecessary for the Court to speculate about the consequences of such proof.[42]

[41] For example, the gerrymandering of school attendance zones (App. 100–109), the transportation of white students past "black" schools to more distant "white" schools (App. 101, 109), the racially-motivated placement of transportable classrooms (App. 121–122), and discriminatory faculty assignments (App. 112–119).

[42] Proof of this nature would, in our view, require the district court to re-evaluate the busing and other relief previously ordered in light of an analysis of the specific purposes to be achieved by the relief. To the extent that the relief has been designed to overcome the specific segregatory effects of discriminatory siting and capacity decisions, long-term remedial measures might be required. If so, termination of the court's regulatory supervision could properly be made dependent upon petitioners' willingness to provide for adequate measures to remedy those specific effects. On the other hand, to the extent that the relief has been designed for more prophylactic purposes—such as assuring the elimination of possible additional, nonapparent segregatory effects of the board's discriminatory practices; overcoming the racial identifiability of schools to which the board's segregatory conduct had contributed; and assuring that such racial isolation as remains in the schools

(Continued)

Instead of introducing proof that the lingering effects of past segregation had been removed, petitioners attempted to demonstrate that the Pasadena Plan, which the school board itself had designed, had become an "instrument of wrong" (*Swift, supra,* 286 U.S. at 115) because it had precipitated "white flight" and because it had caused educational quality to deteriorate. Petitioners repeat those assertions here (Pet. Br. 5–6, 21) as if they were established as facts.

But the district court found otherwise, and the court of appeals did not disturb its findings of fact.[43] See pages 10–16, *supra.* Individual petitioners, and some employees of the Pasadena school system, subsequently have testified that whites are returning to the Pasadena schools and that students' academic per-

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is not, and is not perceived to be, the "inherently unequal" product of *de jure* segregation (*Brown* v. *Board of Education*, 347 U.S. 483, 495)—those purposes can ordinarily be achieved in a much shorter time, and such prophylactic aspects of the relief should no longer be required after they have served their proper purpose. This follows from the general principle that a court of equity should not interfere with the self-government decisions of duly constituted school authorities (either in an initial desegregation decree, in the exercise of the court's regulatory supervision, or in refusing to terminate that supervision) except to the extent necessary to remedy a constitutional violation. See, *e.g.*, *Swann*, *supra*, 402 U.S. at 16; *Milliken* v. *Bradley*, *supra*.

[43] None of the judges of the court of appeals disputed any of the district court's findings of fact. Because "concurrent findings of two courts below [are] final here in the absence of very exceptional showing of error," *Comstock* v. *Group of Institutional Investors*, 335 U.S. 211, 214, the district court's findings of fact should be accepted here. See also *Milliken* v. *Bradley*, *supra*, 418 U.S. at 738, n. 18.

formance has improved. This case, accordingly, presents no occasion to consider how a district court should respond to a demonstration that "white flight" or educational deterioration is a consequence of a desegregation plan."

Petitioners have presented the question (Pet. Br. 2) whether a "unitary school system" must "remain subject *indefinitely*" (emphasis added) to the regulatory supervision of the district court. For the reasons we have discussed above, it is unnecessary for the Court to address this question. Petitioners have not shouldered, let alone discharged, the burden of proving that Pasadena has become a "unitary" school system.

The burden upon the school system to establish that it has become unitary, and consequently is entitled to the termination of regulatory supervision, is a heavy one, but it can be discharged. This is not the first case to be concerned with defining the duration of regulatory supervision or the conditions under which it will be terminated. More than 100 school sys-

[44] We note, however, that in seeking to raise considerations of alleged "white flight" before this Court in this case, petitioners fail to discuss or cite *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484, 490–491. See also *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459; *Morgan* v. *Kerrigan*, *supra*, slip op. at 29–34 (collecting cases); *Brunson* v. *Board of Trustees*, 429 F. 2d 820, 823–827 (C.A. 4) (*en banc*) (Sobeloff, C. J., concurring). But cf. *Swann*, *supra*, 402 U.S. at 31 (relief should be "reasonable, feasible and workable"); *Davis*, *supra*, 402 U.S. at 37 ("the district judge * * * should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."). And see generally Fiss, *The Jurisprudence of Busing*, 39 L. & Contemp. Prob. 194 (1975).

tems that the United States has sued to eradicate segregation have achieved unitary status and have been relieved of the continuing active supervision of the district courts. Relief from such supervision is a goal shared by school systems, the federal courts (see *Swann, supra*), the Congress (see 20 U.S.C. (Supp. IV) 1718), and the federal Executive Branch. Cf. *Rizzo* v. *Goode, supra,* slip op. 15–17. The school systems that have obtained such relief have done so by demonstrating their continued fidelity to the principle of nondiscrimination and by convincing the lower courts that the "dangers, once substantial, have become attenuated to a shadow." *United States* v. *Swift & Co., supra,* 286 U.S. at 119.

The United States Court of Appeals for the Fifth Circuit has established guidelines for determining whether a school system has achieved the "full compliance" to which the Court referred in *Swann, supra,* 402 U.S. at 31–32, and which justifies the termination of active supervision. A school system that has been operating under an injunctive decree of desegregation is entitled to dissolution of the regulatory injunction only after it has become, and been declared, unitary, and only if it has maintained that status for a sufficient period of time (three years is the adopted rule-of-thumb) to indicate that a regression to its prior status is not likely to occur. See *United States* v. *Texas* (*San Felipe Del Rio Consolidated ISD*), 509 F. 2d 192; *Lee* v. *Macon County Board of Education,* 455 F. 2d 978; *Calhoun* v. *Cook,* 451 F. 2d 583; *Youngblood* v. *Board of Public Instruction,* 448 F. 2d 770; *Steele* v. *Board of Public Instruction,* 448 F. 2d 767; *Wright* v. *Board of Public Instruction,* 445 F. 2d 1397.

There is no litmus paper test by which a court can determine when the time is at hand to end active judicial supervision. Each of the more than 100 cases has turned on its own facts; each district court has been required to determine whether the effects of discrimination have been eliminated, whether the officials then in charge of the schools were likely to discharge their constitutional duties without the need for intense judicial scrutiny. In this regard the Court must "rely to a large extent * * * on the informed judgment of the district courts in the first instance" (*Swann, supra,* 402 U.S. at 28; see also *Brown II, supra,* 349 U.S. at 299–301). Perhaps rules will evolve from this process as additional districts seek such relief and as, through experience, courts compile the criteria that favor relaxed supervision and those that indicate the contrary. We have set out in an appendix to this brief a description of many of the cases granting such relief, and we have reprinted for the Court's convenience illustrative orders granting relief. Illustrative memoranda for the United States discussing the propriety of such relief in particular cases have been lodged with the Clerk of this Court.

Here, however, that Pasadena has not yet shown that it qualifies for relaxed supervision under these evolving standards. Its compliance with the Pasadena Plan has been grudging at best (App. 452–454, 458–459). It has been adjudged in contempt for violations

of the Plan. 384 F. Supp. 846. Cf. App. 514–518. And petitioners have announced their intention, upon securing freedom from active judicial supervision, to discard the Pasadena Pan and to institute a system of student assignments that would perpetuate in the Pasadena schools the racial indentifiability that had resulted in substantial part from the board's segregatory conduct. Petitioners thus have failed to demonstrate their readiness, in the absence of judicial supervision, to eliminate the still-lingering effects of the board's past discriminatory conduct. The extent of racial balance resulting from a judicial decree may often change after the decree is lifted. That is no objection to the end of judicial supervision if all *de jure* segregatory conduct has ended, the effects of the prior *de jure* segregation have been elimintaed, and the new configuration merely reflects demographic patterns. See *Swann, supra,* 402 U.S. at 31–32. But petitioners have not shown that that ~~sage~~ stage has been reached here.

D. THE DISTRICT COURT PROPERLY REJECTED PETITIONERS' ALTERNATIVE PLAN

If, as we have argued, it was proper for the district court to continue its active supervision of the Pasadena schools, the only issue remaining in this case is whether it was required to adopt the proposed Alternative Plan as the instrument of that supervision. We submit that the court of appeals correctly decided that it was not. There is "a wide range of discretion in the District Court to mould the decree

to the exigencies of the particular case; and where the findings of violations are sustained, we will not direct a recasting of the decree except on a showing of abuse of discretion." *United States* v. *Crescent Amusement Co., supra,* 323 U.S. at 185. There was no abuse of discretion here.

The Alternative Plan was properly rejected because it would be the equivalent of the termination of active supervision. It is primarily a "freedom of choice" plan designed to allow students to receive their education in their neighborhood schools;[45] it is in effect a disguised abandonment of judicial supervision. But that is inappropriate: "freedom of choice" has failed to produce or achieve desegregation in Pasadena itself and elsewhere in California (App. 395–396, 455–457, 549–557; Pet. App. A12–A14); it follows that, to be effective, a plan of desegregation for Pasadena must include at least some compulsory student assignment provisions, the very sort of provisions the Alternative Plan would abolish.

In *Green, supra,* and its companion case, *Monroe* v. *Board of Commissioners,* 391 U.S. 450, this Court unanimously expressed its disapproval of "free choice" and "free transfer" plans of student enrollment that do not promise realistically to achieve de-

[45] As Judge Wallace stated in his dissenting opinion below, "the Alternative Plan is a freedom-of-choice plan and therefore an unlikely remedy for past de jure segregation * * *" (Pet. App. A27). See also *id.* at A13 (opinion of Judge Ely); App. 455.

segregation. Recognizing in *Green* (391 U.S. at 440) that "the general experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness as a tool of desegregation," the Court concluded (*id.* at 440–441):

> Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways * * * promising speedier and more effective conversion to a unitary, nonracial school system ,"freedom of choice" must be held unacceptable.

Similarly, in *Monroe* the Court rejected a plan under which students could "freely transfer" to a school of their choice. The Court wrote (391 U.S. at 458–459):

> Plainly, the plan does not meet respondent's "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board, supra,* at 437–438. * * * Like the transfer provisions held invalid in *Goss* v. *Board of Education,* 373 U.S. 683, 686, "[i]t is readily apparent that the transfer [provision] lends itself to perpetuation of segregation."

See also *Raney* v. *Board of Education, supra.* A "freedom of choice" plan is unacceptable if it "operate[s] simply to burden children and their parents with a responsibility [to desegregate] which *Brown*

II placed squarely on the School Board" (*Green, supra,* 391 U.S. at 441–442).

The Alternative Plan is unacceptable under these standards. Pasadena already has a method of desegregation "promising speedier and more effective" results than freedom of choice. That method, the Pasadena Plan itself, has largely desegregated the district's schools and, according to the school system's administrative director of planning and research, can continue to do so with increasing ease in the future (see note 18, *supra*). Moreover, the Pasadena Plan has not been unsuccessful educationally; serious disciplinary problems have decreased; students' attitudes toward school, toward themselves, and toward their peers has remained stable or improved; and a variety of innovative educational programs have been successfully implemented (see pages 14–16, *supra*). Petitioners' claim that the Pasadena Plan has been responsible for "white flight" was not supported by proof (see pages 10–14, *supra*). And, according to Superintendent Cortines, the kinds of innovative "educational alternatives" envisioned in the Alternative Plan can be implemented under the Pasadena Plan (see note 21, *supra*) and are as likely to attract white families to the school district under the Pasadena Plan as under the proposed modification (App. 529).

The evidence also shows that the Alternative Plan is not one which "promises realistically to work, and promises realistically to work *now.*" *Green, supra,* 391 U.S. at 439. Pasadena's past experiments with "free choice" and "open enrollment" plans have not re-

sulted in desegregated schools (see note 10, *supra*). Plans of voluntary desegregation in the San Bernardino and Richmond, California school districts have failed, despite strenuous efforts by school officials to make minority neighborhood schools attractive to all students (a "magnet" effort), and despite the fact that those plans—like the petitioners' proposal—assured transportation for any student wishing to attend a school outside his or her neighborhood (App. 395–396, 549–557).

The Alternative Plan's "unique educational alternatives" concept—the only device purportedly designed to produce desegregation—is not a concrete proposal but merely a suggestion of the sorts of programs which could be instituted if parents were to express an interest in such programs. There is no assurance that the Plan's alleged catalysts of desegregation would be implemented at all,[46] let alone that they would in fact desegregate the schools.[47] In the last analysis the pro-

[46] Indeed, petitioners Myers, Newton, and Vetterli apparently oppose such innovations (see App. 283).

[47] The petitioners cite *Hart* v. *Community School Board*, 512 F. 2d 37 (C.A. 2), as an example of a case holding that "plans including specialized schools * * * with an opportunity for parental choice among them, are appropriate even where the plan is directed to the translation of a dual system into a unitary one" (Pet. Br. 22–23).

The establishment of a so-called "magnet school" was approved in *Hart* as part of a plan to desegregate that district's schools. However, the school board resolution relating to the establishment of the "magnet school" contained a provision that promised attainment of a specific quantum of desegregation (512 F. 2d at 42–43, n. 5), and the district court added a proviso to the plan which de-

(Continued)

posed Alternative Plan is nothing more than a proposal to return to schools mirroring the racial image of the surrounding area." But in a school system like this one, involving (among other things) the continuing effects of discriminatory siting and capacity decisions in school construction, desegregation "cannot be limited to the walk-in school." *Swann, supra,* 402 U.S. at 30.

In *Green, supra,* the Court said (391 U.S. at 438):

> [A] plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is * * * intolerable.

In *Monroe, supra,* 391 U.S. at 459, the Court reasserted the earlier holding of *Goss* v. *Board of Education,* 373 U.S. 683, 689, that

manded certain minimal levels of attendance at the school in that approximate ratio and ordered the development of a "back-up plan," based on zoning and transportation, which would be kept up-to-date and implemented in the event of failure of the magnet school plan. *Id.* at 43. The plan approved by the court of appeals in *Hart* was quite different from the plan rejected here. The court of appeals affirmed the remedy in *Hart* only because the district court "hedged the 'magnet school' plan * * * with conditions which, if not met on schedule, would require reversion to * * * the 'back-up plan'" (*id.* at 52) and the plan was "not free of coercive elements" (*id.* at 54). See also *Morgan* v. *Kerrigan, supra,* slip op. 34–39.

[48] The Plan's proposed part-time pairing of "sister schools" of "opposite ethnic make-up" is not an acceptable substitute for desegregation. See, *e.g.*, *Morgan* v. *Kerrigan, supra,* slip op. 12–13; *Keyes* v. *School District No. 1, Denver, Colorado,* 521 F. 2d 465, 477–479 (C.A. 10), certiorari denied, January 12, 1976, No. 75–701; *Arvizu* v. *Waco Independent School District,* 495 F. 2d 499 (C.A. 5), modified, 496 F. 2d 1309 (*per curiam*); *United States* v. *Texas Education Agency* (*Austin ISD*), 467 F. 2d 848, 858–859, 873 (C.A. 5) (*en banc*).

no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment.

In seeking relief beyond that already afforded them by the court of appeals in the present posture of this case,[49] petitioners seek no less than a retreat from these principles. They are asking this Court to declare that a school system with a history of unconstitutionally segregated schools may, after a brief court-ordered interlude without systemic violations of the Fourteenth Amendment, implement a plan of student enrollment that holds no promise of maintaining an effective remedy against the still-remaining segregatory effects of the board's discriminatory conduct. Such a declaration—permitting, in important respects, a return to the conditions that existed in Pasadena prior to 1970—would be inconsistent with a generation of decisions from *Brown* through *Swann*.

[49] As we understand the opinions below, there is little ultimate disagreement among the court of appeals judges concerning the governing legal principles; they differed, instead, principally in their interpretation of the grounds upon which the district court had acted. Judge Wallace, in dissent, expressed the view that the district court had failed "to consider whether the racial imbalance foreseeable upon dissolution of the injunction [or implementation of the Alternative Plan] is attributable to intentionaliy segregative actions of the school district" (Pet. App. A26). As we have explained in detail, we agree that under this Court's decisions, such a failure to distinguish for remedial purposes between *de facto* and *de jure* segregation would be error. In our view, however, the district court's findings and opinion, while not free from ambiguity in their use of terms (see pages 6, 34, *supra*), sufficiently show that its decision is properly based on its duty to remedy the effects of *de jure* segregation (see pages 6–10, *supra*).

While those decisions do not contemplate indefinite judicial regulatory supervision of school affairs or sanction judicial efforts designed to create racially balanced schools rather than to remedy constitutional violations, they do require the adoption of effective measures to eliminate the segregative effects of a school board's discriminatory conduct. Where, as here, the need for such measures remains to a substantial degree, it would be improper for a court to hold that the promise of *Brown* has been satisfied by the district's brief experience with a desegregated system.[50]

II

A DESEGREGATION CASE IN WHICH THE UNITED STATES IS A PLAINTIFF CANNOT BECOME MOOT

The private plaintiffs have now graduated from the Pasadena Schools. Petitioners contend (Pet. Br. 24–25) that this makes the case moot and (*id.* at 25) that "the presence of the United States is insufficient to preclude the dismissal of the action as moot." We disagree.

The United States intervened pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h–2. That section provides that "the United States shall be entitled to the same relief, as if it had instituted the action." The United States is not limited to the relief the private plaintiffs sought or even to the relief the

[50] Cf. Bell, *Waiting on the Promise of Brown*, 39 L. & Contemp. Prob. 341 (1975).

private plaintiffs could have sought. In this case the United States sought relief much more extensive than that requested by the private plaintiffs. The role of the United States has not been, as petitioners assert (Pet. Br. 25), "purely ancillary to that of the plaintiffs." The case was instituted as a class action suit to desegregate the district's high schools,[51] but our complaint in intervention "brought into the case the entire Pasadena Public School system." 415 F. 2d at 1243. It requested an injunction to prevent further unconstitutionally discriminatory practices and to require the school board to develop and implement a plan that would eliminate the effects of past discrimination. See 415 F. 2d at 1243.

Petitioners err in stating that the United States "asserted no right to relief except in terms of the plaintiffs' demands" (Pet. Br. 25) and that, if it had asserted a right to additional relief, it would be "precluded" (Pet. Br. 26) by statute from doing so. The United States did not commence this action pursuant to 20 U.S.C. (Supp. IV) 1706, which authorizes it to bring suit to vindicate the rights of particular individuals. It intervened pursuant to 42 U.S.C. 2000h–2, which authorizes the United States to assert claims in addition to the grievances of private parties. It did so here.

Nor are petitioners correct in stating (Pet. Br. 26) that "there is no authorization in Title IX for the United States to file such a suit except on behalf of wronged individuals who could not secure ade-

[51] August 28, 1968, Complaint at 1–2.

quate counsel in some other fashion." Title IX authorizes the intervention of the United States in actions "seeking relief from the denial of equal protection of the laws under the fourteenth amendment * * * *if the Attorney General certifies that the case is of general public importance*" (emphasis added).[52] This certification requirement ensures that the Attorney General will intervene only in cases significant enough to give the United States an interest separate from the interests of the private parties. The United States' interest in the present case therefore is its own.[53] That interest survives the graduation of the private plaintiffs.[54]

Even if the United States were not a party, it is far from certain that *Board of School Commissioners* v. *Jacobs*, 420 U.S. 128, would indicate that the case is moot. This case, unlike *Jacobs*, involves the continuing duty of a district court to supervise the progress

[52] 42 U.S.C. 2000h–2.

[53] Petitioners rely upon 42 U.S.C. 2000c–6 and 2000c(b), which, they assert (Pet. Br. 26), preclude the United States from bringing an action merely to achieve racial balance. As we demonstrated at pages 6–10, *supra*, however, the Pasadena schools became segregated because of discriminatory actions of the school board. The United States' complaint sought an injunction directing the school authorities to cease their discriminatory actions and to purge the school system of the effects of those actions. The United States has not sought racial balance for its own sake.

[54] See also *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633, which holds that cases brought by the United States are not moot even if the defendant voluntarily discontinues its illegal activity, so long as there is any reasonable expectation that a wrong will be repeated. Cf. Note, *The Mootness Doctrine in the Supreme Court*, 88 Harv. L. Rev. 373, 380–395 (1974).

of a school district that has begun the desegregation process pursuant to a court order entered at a time when the case was clearly not moot. The court has a duty to retain jurisdiction until that process has been completed. *Brown II, supra,* 349 U.S. at 301; *Green, supra,* 391 U.S. at 439; *Raney* v. *Board of Education, supra,* 391 U.S. 449; *Alexander* v. *Holmes County Board of Education, supra,* 396 U.S. at 21. A desegregation order, even when entered at the behest of private plaintiffs, vindicates not just private rights and the rights of students as a class but national policy as well. *Northcross* v. *Board of Education,* 412 U.S. 427, 428. Premature dismissal of the case on the ground that the nominal plaintiffs have graduated would defeat the vindication of that policy.[55]

[55] The case was brought as a class action. The district court's neglect so to certify it—entirely understandable in light of the intervention by the United States—does not make the case moot, because the continuing power of the court is derived from the nature of the wrong and the nature of the relief, not from the identity of the plaintiffs. In any event, any defect caused by failure to certify the class can be rectified by the addition of new plaintiffs similarly situated. See *Rogers* v. *Paul*, 382 U.S. 198, 199.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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FEBRUARY 1976.

APPENDIX

In more than 100 cases of which we are aware district courts have released school systems from detailed regulatory supervision and substituted general permanent injunctions. In other cases, apparently a substantial number, detailed supervision has been discontinued and the case transferred to the district court's inactive docket, but the original injunction has not been dissolved. For examples of the former category see the orders set out at App. 248–257 and see, *e.g.*, *Lee* v. *Macon County Board of Education,* N.D. Ala., Civil Action No. 70–251–S (ten school districts) (order filed February 19, 1975); *id.* (eight school districts) (order filed July 25, 1974); *id.* (seven school districts) (order filed July 11, 1974); *id.* (three school districts) (order filed July 3, 1974); *United States* v. *State of Georgia,* S.D. Ga., Civil Action No. 3009 (eighteen school districts) (order filed February 14, 1974); *id.*, M.D. Ga., Civil Action No. 2771 (thirty-five school districts) (consent order filed January 24, 1974); *Smith* v. *North Carolina State Board of Education* (*Goldsboro City*), E.D. N.C., Civil Action No. 2572 (order filed November 6, 1973); *United States* v. *Baker County School District* (*Pasco County*), M.D. Fla., Civil Action No. 70–298–CIV–T (order signed November 7, 1973).

At least two elements have combined in each of these cases before the district court has been willing to dissolve the regulatory injunction. First, there has been satisfactory compliance with the injunction for a term of years, during which the school district has (so far as it is possible) eliminated the continuing effects of segregation. Second, the school officials then in office

have demonstrated a willingness to cooperate in the future so that desegregation can be maintained without the need for intrusive judicial supervision. Often, it has appeared likely that the school officials would maintain attendance zones or patterns similar to those developed under under the court's supervision, so that the former racial identifiability of the schools would be unlikely to reassert itself.

The terminating order itself may contain a variety of provisions addressed to the needs and problems of particular school districts. Almost every terminating order contains a general permanent injunction against future racial discrimination in student or faculty assignments, school construction and placement, and the allowance of transfers to another school. Other orders also have contained provisions directing the school officials: (1) to continue assigning students in a manner consistent with the former regulatory injunction; (2) to allow any student who is a member of a race in the majority at his school to transfer to some school at which his race is in the minority, and to provide transportation for that purpose; or (3) not to allow more than a small proportion of the school district's children to attend public schools outside the district. At least one terminating order contains a provision automatically dissolving the general permanent injunction after seven additional years of compliance. For the convenience of the Court we have reprinted in this appendix the terminating orders in eight separate cases, involving 79 separate school systems. See also App. 248–257. We are also lodging with the Clerk of the Court copies of the memoranda for the United States setting out the position of the Department of Justice in several of those cases and balancing the factors that seemed to us to militate for and against termination of regulatory supervision.

In the United States District Court for the Northern District of Alabama, Southern Division

Civil Action No. 70–251–S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS, AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION, ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States District Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved

Carbon Hill City
Fayette County

Franklin County
Lamar County
Marion County
Muscle Shoals City
Russellville City
Tuscumbia City
Winston County
Winfield City

and the permanent injunction in paragraph 2, below substituted.

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure the transportation of all eligible pupils on a nonsegregated and otherwise nondiseriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if

it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 19th day of February, 1975.

J. Foy Guin, Jr.,
United States District Judge.

In the United States District Court for the Northern District of Alabama, Eastern Division

Civil Action No. 70-251-S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved

Attalla City
Cherokee County
DeKalb County

Etowah County
Ft. Payne City
Guntersville City
Marshall County
St. Clair County

and the permanent injunction in paragraph 2, below, substituted.

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure the transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

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3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 25th day of July, 1974.

SAM C. POINTER,
United States District Judge.

In the United States District Court for the Northern District of Alabama, Southern Division

Civil Action No. 70-251-S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States District Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved

Clay County
Cullman County

Cullman City
Jacksonville City
Morgan County
Scottsboro City
Sylacauga City

and the permanent injunction in paragraph 2, below, substituted.

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure the transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discrimatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 11th day of July, 1974.

JAMES H. HANCOCH,
United States District Judge.

201-038—76——7

In the United States District Court for the Northern District of Alabama, Eastern Division

Civil Action No. 70-251-S

ANTHONY T. LEE, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS AND AMICUS CURIAE

NATIONAL EDUCATION ASSOCIATION, PLAINTIFF-INTERVENORS

v.

MACON COUNTY BOARD OF EDUCATION ET AL., DEFENDANTS

ORDER

It having been shown to the satisfaction of this Court that certain defendant school systems have been operating a unitary school system for the past three years, and that all litigation pertaining to compliance with the orders of the Court have been satisfactorily resolved, this Court, deeming it proper so to do, hereby orders, adjudges and decrees that:

1. The detailed regulatory injunctions issued by this Court and by the United States District Court for the Middle District of Alabama as against the following school systems, the individual board members and the superintendents thereof, are dissolved and

Blount County
Oneonta City
Mountain Brook City

the permanent injunction in paragraph 2, below, substituted

2. The above-named defendant school district, the individual board members and the superintendents thereof, are permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the above-named defendant school districts shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate or otherwise discriminate against students or faculty by or within school on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

c. Bus routes and the assignment of students to buses will be designed to ensure transportation of all eligible pupils on a nonsegregated and otherwise nondiscriminatory basis.

d. All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

e. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a nondiscriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. The actions pertaining to the above-named districts are hereby placed on the inactive docket of this

Court subject to being re-activated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

The provisions of previous orders in this case as they relate to other defendants not named in paragraph 1, above, remain in full force and effect and are in no way affected by this order.

Done this 3rd day of July, 1974.

FRANK H. MCFADDEN,
United States District Judge.

In the United States District Court for the Southern District of Georgia, Savannah Division

Civil Action No. 3009

UNITED STATES OF AMERICA, PLAINTIFF

CHARLIE RIDLEY, ET AL., PLAINTIFF-INTERVENOR

v.

STATE OF GEORGIA, ET AL., DEFENDANTS

CONSENT ORDER

This case was originally filed by the United States on August 1, 1969, in the United States District Court for the Northern District of Georgia against the State of Georgia and various school agencies and officials of the state. *United States* v. *State of Georgia, et al.*, C.A. No. 12,972 (N.D. Ga.). That Court entered a number of orders for the purpose of effecting desegregation of the public schools of 81 school districts [1] located throughout the State of Georgia, and on September 5, 1972 in compliance with the directions of the United States Court of Appeals for the Fifth Circuit, the Court issued an order which, *inter alia* added as parties defendants each individual school district and transferred to this Court's jurisdiction the 21 school districts involved in these proceedings.

[1] The 18 original school districts in the case were reduced to 79 by the consolidation of two city districts with their respective county counterparts.

On December 27, 1973, the State defendants moved this Court to dismiss the State of Georgia, the State Board of Education and the State Superintendent of Schools as parties defendant, or, in the alternative, to "enter and order—similar to an order entered in the Northern District on June 23, 1973, placing on an inactive docket those local county and city school systems within the Southern Judicial District which by virture of compliance with all court orders have achieved and maintained a 'unitary status'—" The State defendants, the intervenors and the United States have agreed that the alternative relief requested by the state would appropriately dispose of the motion.

On the basis of the record in this case, the Court has determined that the Appling County School District, the Atkinson County School District, the Bryan County School District, the Camden County School District, the Candler County School District, the Charleton County School District, the Jefferson Davis County School District, the Jenkins County School District, the McDuffie County School District, the McIntoch County School District, the Montgomery County School District, the Tatnall County School District, the Toombs County School District, the Treutlen County School District, the Vaidalia City School District, the Warren County School District, the Wayne County School District and the Wilkes County School District have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become "unitary" in the sense required by the Supreme Court's decisions in *Green* v. *County School Board,* 391 U.S. 430 (1968) and *Swann* v. *Board of Education,* 402 U.S. 1 (1971).

The bi-annual reports submitted by Columbia County School District and the Jefferson County School District in October, 1973, indicate that for certain schools in the systems the ratio of faculty assigned to those schools on a full-time basis deviates by more than two positions from the system-wide faculty quotient.

On February 22, 1972, the Dublin School System's desegregation plan was substantially modified in order to bring the system into compliance with the standing orders of the Court regarding student assignment. This plan was not implemented until the 1972–73 school year.

The parties to this consent order agree that the above findings accurately represent the present status of the indicated school districts as shown by the record in this case and the bi-annual reports filed by the school districts. As indicated by the signatures of counsel below, the parties have also agreed on the form of this decree, and the Court being of the opinion that the entry of this decree will effectuate federal law, now therefore:

It is ordered, adjudged, and decreed, that:

1. The detailed regulatory injunction issued by the United States District Court for the Northern District of Georgia on December 17, 1969, as subsequently modified, is dissolved for the Appling County School District, the Atkinson County School District, the Bryan County School District, the Camden County School District, the Candler County School District, the Charleton County School District, the Jefferson Davis County School District, the Jenkins County School District, the McDuffie County School District, the McIntosh County School District, the Montgomery County School District, the Tatnall County School

District, the Toombs County School District, the Treutlen County School District, the Vidalia City School District, the Warren County School District, the Wayne County School District and the Wilkes County School District and the following permanent injunction substituted for each school district:

(a) The school district shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

(b) Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

(c) Each school district shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which the student desires to move.

(d) Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise nondiscriminatory basis.

(e) All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

(f) If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a nondiscriminatory

basis, except that it shall not consent to tranfers where the cumulative effect will reduce desegregation in either district.

2. Each of the school districts listed in paragraph 1 above shall be placed on this Court's inactive docket, subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

3. The State of Georgia, the State Board of Education, its individual members, and the State Superintendent of Schools have a continuing duty to promote compliance by the school districts in this cause with orders of this Court and shall remain as active parties to this case until all of the school districts in this cause have been placed on the inactive docket.

4. The July 16, 1971, Order in this case provides:

> "The ratio of faculty and staff assigned . . . [each] facility on a full-time basis [must be] . . . substantially the same as the faculty quotient; system-wide personnel are to be counted in such ratio proportionately to the number of schools served; 'substantially' means as near to exact as possible and in no event to exceed over 2 positions from exact."

Since the bi-annual reports of the Columbia County School District and the Jefferson County School District show that these districts have schools, the faculties of which exceed two positions from the exact system-wide faculty ratio, they will remain on the active docket of this Court. Further special orders will subsequently issue to the school officials of the two districts concerning this matter.

5. Since the Dublin City School System's plan for desegregation has not been in effect for a three year period due to its modification in February, 1972, the

Dublin City School System will remain on the active docket of this Court.

6. The State of Georgia, the State Board of Education, its individual members, the State Superintendent of Schools, the school districts which remain active parties in this cause as indicated in paragraphs 4 and 5 of this Order shall continue to comply with all of the requirements of the December 17, 1969 Order of the United States District Court for the Northern District of Georgia, as subsequently, modified, with the following exceptions:

(a) School districts remaining as active parties in this cause, in lieu of providing the information required by the December 17, 1969 Order, as subsequently modified, in their bi-annual reports may provide the information reported in the School System Summary Reports (Forms 101 & 102) which are filed with the Department of Health, Education and Welfare and the information reported in the Elementary-Secondary Staff Information (Form EEO–5) which is filed with the Equal Employment Opportunity Commission. However, all school districts which remain as active parties in this cause shall continue to file bi-annual reports to the State Board of Education and the Department of Health, Education and Welfare.

(b) The provisions of the detailed regulatory injunction of December 17, 1969, issued by the United States District Court for the Northern District of Georgia, as subsequently modified, specifying the duties of the State defendants in this cause, shall automatically be dissolved as they pertain to each school district which this Court has placed on the inactive docket and the following permanent injunction substituted:

The State of Georgia; the State Board of Education, its individual members and the State Superintendent of Schools (a) shall not take any action which may result in the re-establishment of the former dual school system in any of said school districts; (b) shall not permit any action by any of said school districts which would violate the terms of the permanent injunction provided for in paragraph 4 of this order; (c) shall not provide any state funds to any of said school districts which has been found in violation of the terms of the permanent injunction provided for in paragraph 4 of this order; and (d) shall make appropriate inquiries whenever the State Department of Education receives information or complaints reflecting possible violation by any of said school districts of the terms of the permanent injunction provided for in paragraph 4 of this order.

8. The Clerk is directed to send a copy of this Order to all attorneys who have entered an appearance on behalf of any of the individual school districts named herein, and in the event that no attorney has appeared on behalf of an individual school district, a copy of this Order shall be mailed to the school superintendent of that district. Any individual school district that objects to any of the provisions of this Order must file notice of the objection with this Court within ten (10) days from the date of this Order, which shall become final and conclusive as to each school district which does not object within that time. If objections are filed, a hearing will be set on the objections at a subsequent date.

Done this 14th day of February, 1974.

ALEXANDER J. LAWRENCE,
United States District Judge.

Approved as to form:
KAYDELL O. WRIGHT,
Counsel for Plaintiff.
ALFRED L. EVANS, Jr.,
Counsel for Defendants.
ELIZABETH R. RINDSKOPF, Jr.,
Counsel for Plaintiff-Intervenor.

In the United States District Court for the
Middle District of Georgia, Macon Division

Civil Action No. 2771

UNITED STATES OF AMERICA, PLAINTIFF

CHARLIE RIDLEY, ET AL., PLAINTIFF-INTERVENOR

v.

STATE OF GEORGIA, ET AL., DEFENDANTS

CONSENT ORDER

This case was originally filed by the United States on August 1, 1969, in the United States District Court for the Northern District of Georgia against the State of Georgia and various school agencies and officials of the state. *United States* v. *State of Georgia, et al.*, C.A. No. 12,972 (N.D. Ga.). That Court entered a number of orders for the purpose of effecting desegregation of the public schools of 81 school districts[1] located throughout the State of Georgia, and on September 5, 1972, in compliance with the directions of the United States Court of Appeals for the Fifth Circuit, that Court issued an order which, *inter alia* added as parties defendants each individual school district and transferred to this Court's jurisdiction the 47 school districts involved in these proceedings.

[1] The 81 original school districts in the case were reduced to 79 by the consolidation of two city districts with their respective county counterparts.

On December 27, 1973, the State defendants moved this Court to dismiss the State of Georgia, the State Board of Education and State Superintendent of Schools as parties defendant, or, in the alternative, to "enter an order . . . similar to an order entered by the Northern District on June 23, 1973, placing on an inactive docket those local county and city school systems within the Middle Judicial District which by virtue of compliance with all court orders have achieved and maintained a 'unitary status'. . . ." The State defendants, the intervenors, and the United States have agreed that the alternative relief requested by the state would appropriately dispose of the motion.

On the basis of the record in this case, this Court has determined (1) the Bleckley County School District, the Butts County School District, the Calhoun County School District, the Chattachoochee County School District, the Clay County School District, the Cochran City School District, the Cook County School District, the Crawford County School District, the Dooly County School District, the Grady County School District, the Hancock County School District, the Harris County School District, the Hart County School District, the Hawkinsville City and Pulaski County School District, the Jasper County School District, the Jones County School District, the Lee County School District, the Macon County School District, the Marion County School District, the Miller County School District, the Monroe County School District, the Morgan School District, the Peach County School District, the Pelham City School District, the Putnam School District, the Quitman School District, the Randolph County School District, the Schley County School District, the Terrell County

School District, the Turner County School District, and the Wilcox County School District have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become "unitary" in the sense required by the Supreme Court's decisions in *Green* v. *County School Board,* 391 U.S. 430 (1968) and *Swann* v. *Board of Education,* 402 U.S. 1 (1971).

(2) The following school systems have made the indicated modifications in the original desegregation plans which have not previously received court approval:

a. The Echols County School District has designated grades 1–3 within the Echols County Elementary and High School as the Echols County Primary School.

b. The Irwin County School District has added the Irwin County Middle School, serving grades 4–6, and the creation of the Middle School has resulted in alteration of grade structure at Irwin County Elementary, formerly serving grades K–4 and now serving K–3, and at the Irwin County Junior High, formerly serving grades 5–8, and now serving grades 7–8.

c. The Mitchell County School District altered its grade structures by combining Mitchell County Primary and Mitchell County Middle, formerly serving grades 6–9, now serving grades 6–8; Sumner Elementary School serving grades 1–6 and by combining Mitchell County Junior High and Mitchell County Senior High, formerly serving grades 7–9 and 10–12, into the Mitchell County High School serving grades 7–12.

d. The Worth County School District rearranged grade structures in Holley Jr. High, formerly serving grades 6–9, now serving grades 6–8; Sumner Elementary, formerly serving grades 5–9, now serves grades

5–8; Ossie Wheary, formerly serving grades 1–8, now serves grades K and 5; and Worth County High, formerly serving grades 10–12, now serves grades 9–12.

None of the above modifications have adversely effected desegregation of the public schools in the respective school districts and they have become "unitary" in the sense required by *Green, supra,* and *Swann, supra.*

The Court further determines that the bi-annual reports filed on October 10, 1973, by the following school districts show student transfers being made from, or being received by, the school system as indicated:

a. Brooks County. This district has reported 6% (68 white students) of its minority white enrollment transferring to Thomas County. Brooks County has a student racial enrollment of 65% black and 35% white (1949 black, 1067 white), whereas Thomas County has a student racial enrollment of 58% black and 42% white (3318 black, 2371 white). Brooks County District reports an additional 10% of its minority enrollment (119 white students) transferring to Lowndes County which has a 75% white student enrollment.

b. Early County. This district has reported 7% (80 white students) of its minority white enrollment transferring to Seminole County. Early County has a 38% white student enrollment (1731 black, 1039 white) whereas Seminole County has a student racial enrollment of 44% black and 56% white.

c. Sumter County. This district has reported 18% (138 white students) of its minority white enrollment transferring to Americus City School District. Sumter County has a student racial enrollment of

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72% black and 28% white (1604 black, 609 white) whereas Americus City has a student racial enrollment of 54% black and 46% white (194 [*sic*] black, 1259 white).

d. Twiggs County. This district has reported 14% (65 white students) of its minority white enrollment transferring to Wilkinson County. Twiggs has a 21% white student enollment (1504 black, 403 white) whereas Wilkinson County has a student racial enrollment of 57% black and 43% white.

The record also shows that the Lamar County School system continues to assign students to public schools under a plan which provides for sex segregation, and no hearing has yet been held where the school officials could demonstrate that the plan is based on educational rather than racial reasons. In addition, the record shows the following active litigation pending with respect to the indicated school districts: (a) the Baker County School District was the subject of a motion for supplemental relief, concerning the sale of a formerly public school for the use of a private segregated school, which was resolved by an order of this Court dated January 4, 1974, and though the time for filing appeal has not run, the Court believes the Baker County School District can also be placed on the inactive docket because the January 4, 1974, order does not relate to student assignment. This action by the Court in no way will affect the January 4, 1974, order which will remain in full force and effect, but the detailed regulatory injunction concerning student assignment against the Baker County School District is dissolved and the permanent injunction outlined in paragraph 2 below, subparagraphs a through f, is substituted therefor; (b) the Elbert County School District is the subject of a pending motion to modify

the desegregation plan presently in effect; (c) the Taylor County School District is the subject of a pending motion to eliminate sex segregation in its schools; (d) the Wilkinson County School District is the subject of a pending motion concerning alleged aid to a private segregated school.

The parties to this consent order agree that the above findings accurately represent the present status of the indicated school districts as shown by the record in this case and the bi-annual reports filed by the school districts. As indicated by the signatures of counsel below, the parties have also agreed on the form of this decree and the Court being of the opinion that the entry of this decree will effectuate federal law, now therefore: it is ordered, adjudged and decreed that

1. The modifications in the desegregation plans for the Worth County School District, Mitchell County School District, Irwin County School District and Echols County School District described above are approved.

2. The detailed regulatory injunction issued by the United States District Court for the Northern District of Georgia on December 17, 1969, as subsequently modified, is dissolved for the Bleckley County School District, the Butts County School District, the Calhoun County School District, the Chattahoochee County School District, the Clay County School District, the Cochran City School District, the Cook County School District, the Crawford County School District, the Dooly County School District, the Echols County School District, the Grady County School District, the Hancock County School District, the Harris County School District, the Hart County School District, the Hawkinsville City and Pulaski County School District, the Irwin County School District, the Jasper County School District, the Jones County School District, the Lee County School District, the Macon County School District, the Marion County School District, the Miller County School District, the Mitchell County School District, the Monroe County School District, the Morgan School District, the Peach County School District, the Pelham City School District, the Putnam School District, the Quitman School District, the Randolph County School District, the Schley County School District, the Terrell County School District, the Turner County School District, the Wilcox County School District, and the Worth County School District and the following permanent injunction is substituted for each school district:

(a) The school district shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

(b) Staff members who work directly with children and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

(c) Each school district shall permit a student attending a school in which his race is in the majority to choose to attend another school where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which the student desires to move.

(d) Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

(e) All school construction, school consolidation and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

(f) If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. Each of the school districts listed in paragraph 2 above shall be placed on this Court's inactive docket, subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

4. The State of Georgia, the State Board of Education, its individual members, and the State Superintendant of Schools have a continuing duty to promote compliance by the school districts in this cause with orders of this Court and shall remain as active parties to this case until all of the school districts in this cause have been placed on the inactive docket.

5. The July 16, 1971, order in this case provides:

> "[I]n no event, shall more than 5% of the minority students be allowed to transfer to other districts where they are either in the majority or made a larger part of a minority percentage than in the district from which they have transferred. . ."

Since the bi-annual reports of the Brooks County School District, the Thomas County School District, the Early County School District, the Seminole County School District, the Sumter County School District,

the Americus City School District, the Twiggs County School District, and the Wilkinson County School District show that those districts are either sending or receiving nonresident students in excess of five (5) per cent of the minority students of the sending school district under circumstances where the transferring students are either in the majority or made a larger part of a minority percentage than in the district from which they have transferred, they will remain on the active docket of this Court. Further special orders will subsequently issue to the school officials of those districts concerning the issues raised by the student transfers shown on the bi-annual reports.

6. Those school districts which are the subjects of pending motions—the Elbert County School District, the Taylor County School District, and the Wilkinson County School District—and the Lamar County School District, which continues to assign students to school on the basis of sex segregation, shall remain on the active docket of this Court.

7. The State of Georgia, the State Board of Education, its individual members, the State Superintendent of Schools the school districts which remain as active parties in this cause as indicated in paragraphs 5 and 6 of this Order shall continue to comply with all of the requirements of December 17, 1969, Order of the United States District Court for the Northern District of Georgia, as subsequently modified with the following exceptions:

(a) School districts remaining as active parties in this cause, in lieu of providing the information required by the December 17, 1969 Order, as subsequently modified, in their bi-annual reports may provide the information reported in the School System Summary Reports (Forms 101 and 102) which

are filed with the Department of Health, Education, and Welfare and the information reported in the Elementary-Secondary Staff Information (Form EEO–5) which is filed with the Equal Employment Opportunity Commission. However, all school districts which remain as active parties in this cause shall continue to file bi-annual reports to the State Board of Education and the Department of Health, Education, and Welfare.

(b) The provisions of the detailed regulatory injunction of December 17, 1969, issued by the United States District Court for the Northern District of Georgia, as subsequently modified, specifying the duties of the State defendants in this cause, shall automatically be dissolved as they pertain to each school district which this Court has placed on the inactive docket and the following permanent injunction substituted:

> The State of Georgia; the State Board of Education, its individual members and the State Superintendent of Schools (a) shall not take any action which may result in the reestablishment of the former dual school system in any of said school districts; (b) shall not permit any action by any of said school districts which would violate the terms of the permanent injunction provided for in paragraph 4 of this order; (c) shall not provide any state funds to any of said school districts which has been found in violation of the terms of the permanent injunction provided for in paragraph 4 of this order; and (d) shall make appropriate inquiries whenever the State Department of Education receives information or complaints reflecting possible violation by any of said school districts of the terms of the permanent injunction provided for in paragraph 4 of this order.

8. The Clerk is directed to send a copy of this Order to all attorneys who have entered an appearance on behalf of any of the individual school districts named herein, and in the event that no attorney has appeared on behalf of an individual school district, a copy of this Order shall be mailed to the school superintendent of that district. Any individual school district that objects to any of the provisions of this Order must file notice of the objection with this Court within ten (10) days from the date of this Order, which shall become final and conclusive as to each school district which does not object within that time. If objections are filed, a hearing will be set on the objections at a subsequent date.

Done this 24th day of January, 1974.

WILBUR D. OWENS, JR.,
United States District Judge.

Approved as to form:

J. GERALD HEBERT,
Counsel for Plaintiff.

ALFRED L. EVANS, JR.,
Counsel for Defendants.

ELIZABETH R. RINDSKOPF,
Counsel for Plaintiff-Intervenor.

In the United States District Court for the Eastern District of North Carolina, Raleigh Division

Civil Action No. 2572

EVERETT DECARL SMITH, JR., ET AL., PLAINTIFFS
AND
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

v.

NORTH CAROLINA STATE BOARD OF EDUCATION, GOLDSBORO CITY BOARD OF EDUCATION, ET AL., DEFENDANTS

ORDER

This cause was heard before his Honor, F. T. Dupree, Jr., District Judge, upon motion of the defendant, Goldsboro City Board of Education, (hereinafter sometimes called Goldsboro) to dismiss this action as it relates to such defendant. The original plaintiffs, plaintiff-intervenor and Goldsboro, were all represented by counsel upon oral argument. Plaintiff-intervenor and Goldsboro filed legal memoranda with the Court. The following facts are established by the record:

1. The defendant Goldsboro was made a party to this proceeding on September 18, 1970, upon motion of Plaintiff-intervenor, the United States of America.

2. Thereafter, in October, 1970, Goldsboro filed an answer to the complaints of the private plaintiffs and plaintiff-intervenor, and at the same time filed with the Court its plan of organization and desegregation adopted and implemented for the school year 1970–71.

3. The only exception or objection taken to the Goldsboro 1970–71 desegregation plan by private plaintiffs and plaintiff-intervenor was to the existence of one all black elementary school located in the Western part of Goldsboro in the center of an all black residential area known as the School Street School.

4. On April 7, 1971, Goldsboro formally adopted a modified school desegregation plan to be implemented during the school year 1971–72. This modified plan eliminated the one all black school which remained in the system.

5. The Goldsboro plan for 1971–72 is set forth in a consent decree filed in this proceeding on May 18, 1971. One of the recitals contained in the order of May 18, 1971, reads as follows:

> "The plan adopted by the defendant Goldsboro City Board of Education for the school year 1971–72 (Appendix A) has been examined by counsel for the private plaintiffs and plaintiff-intervenor and all parties are in agreement that said plan as adopted by the defendant Goldsboro City Board of Education meets the requirements imposed upon [Goldsboro] by the law of the land."

6. Before signing the consent order this Court also examined said plan and concluded that the plan, when implemented, would establish a unitary school system within the district administered by Goldsboro.

7. The plan described in the court order was implemented by Goldsboro for the school year 1971–72 and has been followed for the succeeding school years of 1972–73 and 1973–74.

8. In faithful compliance with the order, Goldsboro has filed each school year, on or before October 15, a

report to the Court containing the information, statistics, and other data required under the reporting provisions of Appendix B of the order. These reports demonstrate, and the Court so finds, that Goldsboro has fully implemented the 1971–72 plan and has otherwise complied with the order of May 18, 1971. Indeed, there has been no complaint of non-compliance filed by any party to this proceeding. Counsel for plaintiff-intervenor concedes in oral argument that Goldsboro is in compliance.

9. There is nothing before the Court to indicate that Goldsboro, or any other agency of the State, has attempted to fix or alter demographic patterns so as to affect the racial composition of any of the schools within the system. Furthermore, there is nothing in the record to indicate or suggest Goldsboro will not continue to act in good faith and to operate a unitary school system.

10. The Court has been informed that the defendant, Jerry D. Paschall, is no longer serving as Superintendent of the Goldsboro City Schools.

Based on the foregoing findings and entire record the Court concludes it has retained jurisdiction over Goldsboro for a reasonable and sufficient period of time to insure that the school system has been operated in compliance with its previously entered order, and in the exercise of its broad discretionary authority, the Court is of the opinion that there is no need or justification for it to continue to exercise a supervisory role and for these reasons the motion to dismiss ought to be granted;

Now therefore, it is ordered, adjudged and decreed:

1. That the defendant, Goldsboro City Board of Education, continue to operate a unitary school system

in substantial compliance with its plan of desegregation previously approved by the Court on May 18, 1971, and with the Constitution of the United States;

2. That this action be and the same is hereby dismissed, without prejudice, as it relates to the defendant Goldsboro City Board of Education and the defendant Jerry D. Paschall, former Superintendent. See Harper, et als., —— F. 2d ———— (No. 73–1853, Fourth Circuit, October 15, 1973).

This the 6th day of November, 1973.

F. T. DUPREE, Jr.,
U.S. District Judge.

In the United States District Court for the Middle District of Florida, Tampa Division

Civil Action No. 70-298-CIV-T
(Pasco County School District)

UNITED STATES OF AMERICA, PLAINTIFF

v.

BAKER COUNTY SCHOOL DISTRICT, ET AL., DEFENDANTS

ORDER

The parties, by and through their counsel, having agreed to entry of the following order, it is hereby ordered, adjudged and decreed:

1. The detailed regulatory injunction issued by this Court on August 5, 1970, is dissolved.

2. The defendant school district is permanently enjoined from operating a dual system of racially identifiable schools. In addition, operation of the defendant school district shall be subject to the following provisions:

a. Defendants shall take no action which tends to segregate students or faculty by or within schools on the basis of race, color, or national origin.

b. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, and national origin.

c. The school district shall permit a student attending a school in which his race is in the

majority to choose to attend another school, where his race is in the minority. Any student transferring under this arrangement must be provided with free transportation and space must be made available in the school to which he desires to move.

d. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

e. All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the reoccurrence of the dual school structure.

f. If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district.

3. This action is hereby closed as an active case of this Court subject to being reopened on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary.

Done this 7th day of November, 1973.

WM. TERRELL HODGES,
United States District Judge.

Approved as to form and content:

JOE A. MCCLAIN,
Attorney for Defendants.

THOMAS M. KEELING,
Attorney for Plaintiff.

U.S GOVERNMENT PRINTING OFFICE: 1978